

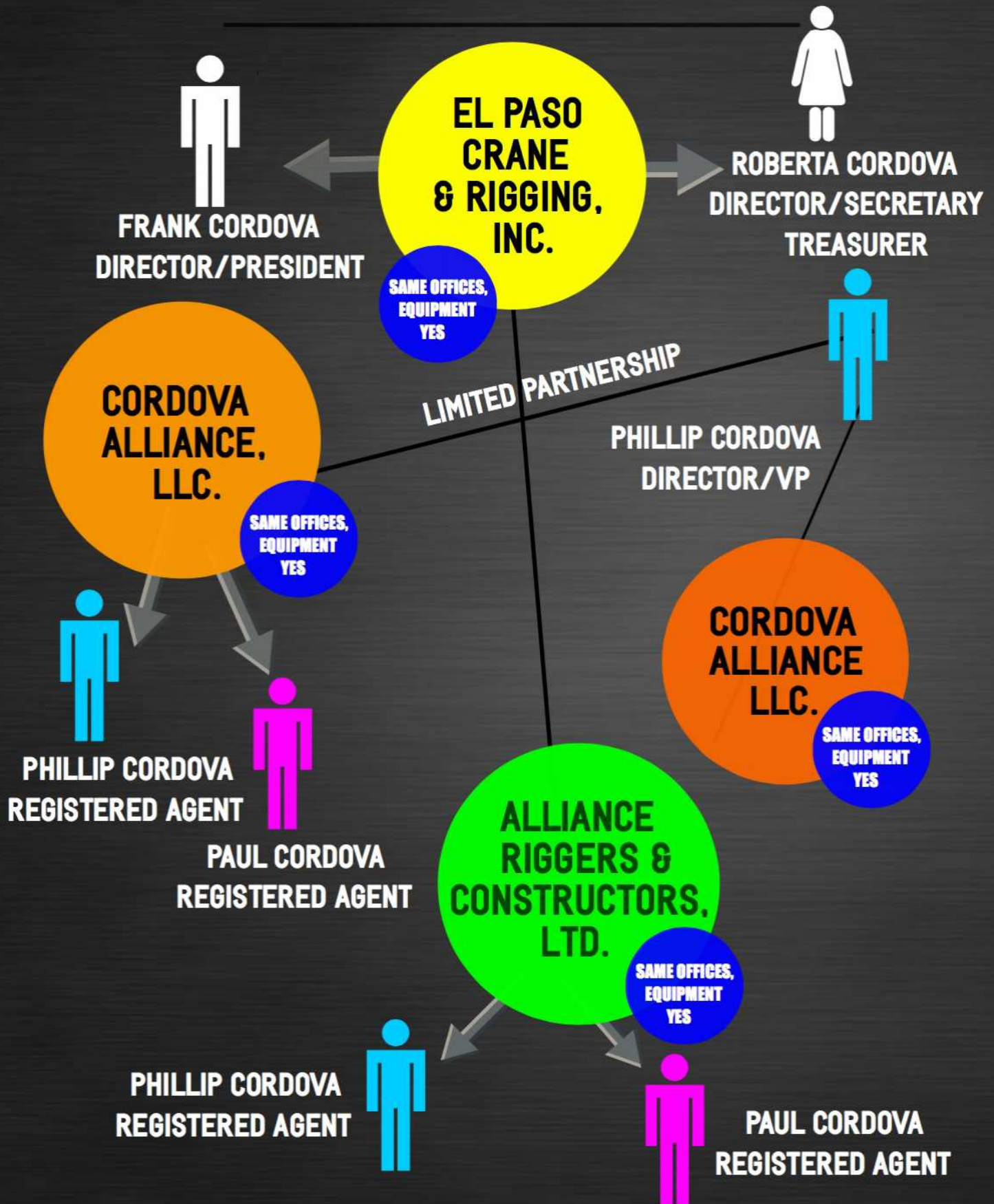
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Filing date: **06/07/2015**

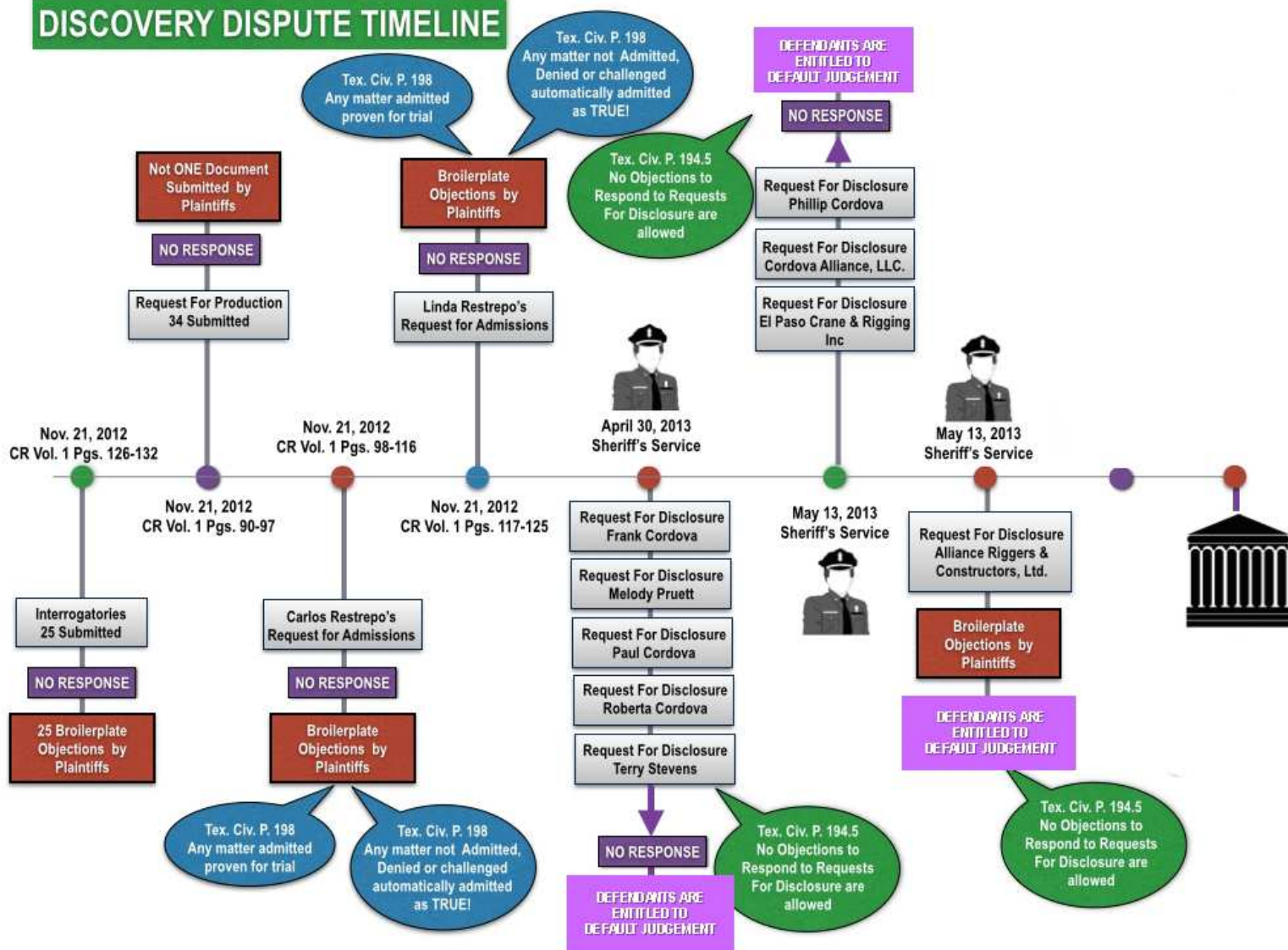
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

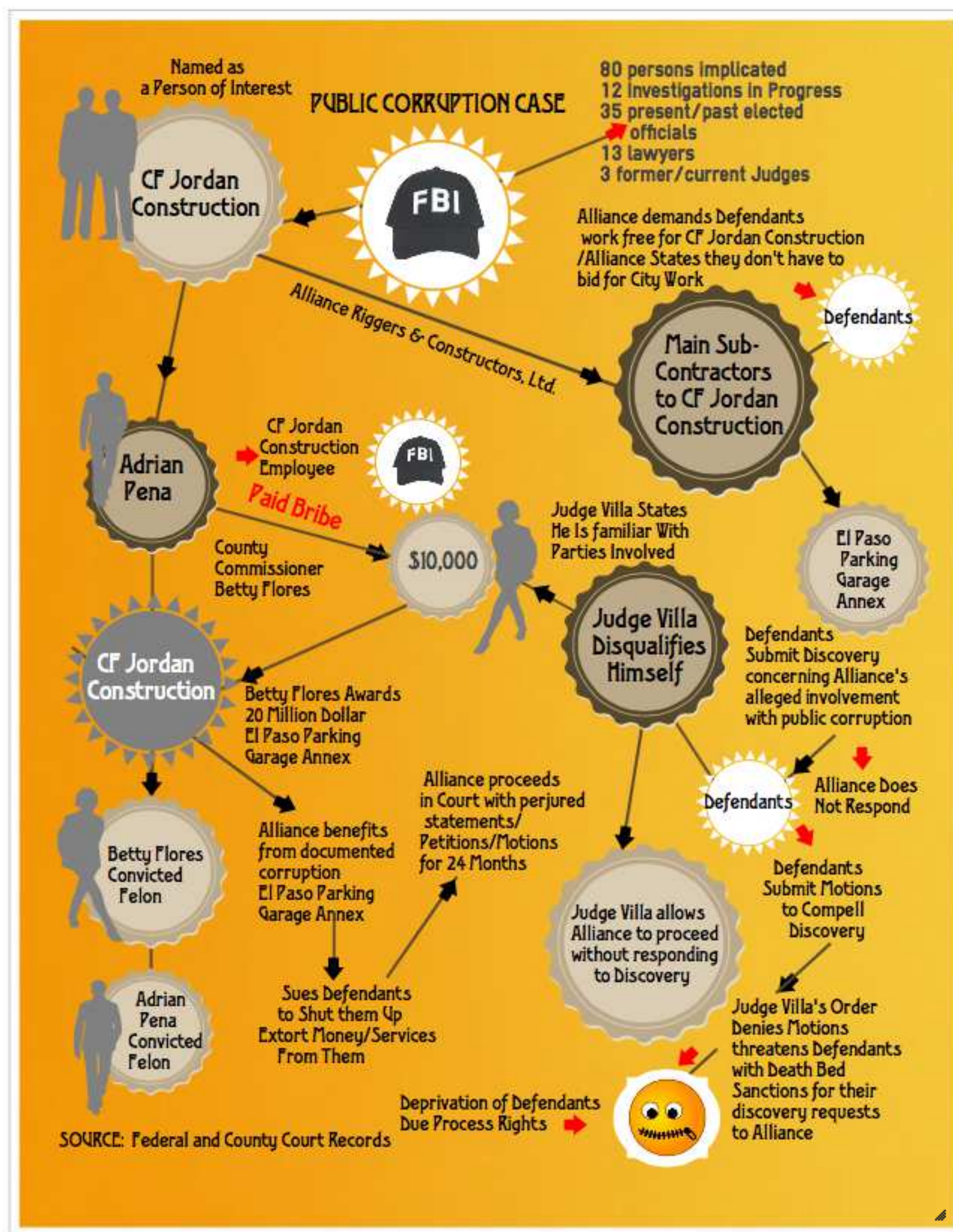
Proceeding	91220386
Party	Plaintiff Dr. Linda S. Restrepo
Correspondence Address	LINDA S RESTREPO PO BOX 12066 EL PASO, TX 79913 UNITED STATES rdilsr@zianet.com, rd-intl@zianet.com
Submission	Motion for Sanctions
Filer's Name	Linda S. Restrepo
Filer's e-mail	rdilsr@zianet.com
Signature	/s/Linda Restrepo
Date	06/07/2015
Attachments	Chart 1 to TTAB Notification.pdf(901686 bytes) Chart 2 to TTAB Notification.pdf(366509 bytes) Chart 3 to TTAB Notification.pdf(541448 bytes) Exhibit 12 to TTAB NotificationNOEXHIBITS.pdf(1344016 bytes)

CORPORATE STRUCTURE



DISCOVERY DISPUTE TIMELINE





IN THE COUNTY COURT AT LAW NUMBER 5
EL PASO COUNTY, TEXAS

ALLIANCE RIGGERS & CONSTRUCTORS, LTD.	§	
	§	
Plaintiff,	§	
	§	
v.	§	Cause No. 2012-DCV04523
	§	
LINDA S. RESTREPO & CARLOS E RESTREPO	§	
D/B/A COLLECTIVELY RDI GLOBAL SERVICES	§	Request Trial by Jury
and R&D INTERNATIONAL,	§	
	§	
Defendants.	§	
	§	
ALLIANCE RIGGERS & CONSTRUCTORS, LTD.	§	
	§	
CounterDefendants	§	
	§	

**DEFENDANTS AMENDED ANSWER TO PLAINTIFF'S FIRST
AMENDED ORIGINAL PETITION, DEFENDANTS COUNTERCLAIM,
AFFIRMATIVE DEFENSES, SUIT ON SWORN ACCOUNT AND DECLARATORY
JUDGMENT REQUEST**

TO THE HONORABLE JUDGE:

Defendants/CounterClaimants Linda Restrepo and Carlos Restrepo Deny and respond to Plaintiff First Amended Complaint as follows:

GENERAL DENIAL

Defendants invoke their rights under (TRCP 97(a), (b), right to file a counterclaim. Pursuant to TEX. R. CIV. P. 92, Defendants assert a general denial and requests that Plaintiff be required to prove the charges and allegations against Defendant by a preponderance of the evidence. This is a claim arising out of a Federal question presented by the Plaintiff. Plaintiff's Complaint purports to state causes of action for Trademark Infringement, Breach of Contract, Declaratory Judgment Request, and Violation of the Texas Deceptive Trade Practices Act.

Defendants deny Plaintiff has stated any valid claims for Breach of Contract, Declaratory Judgment Request, and Violation of the Texas Deceptive Trade Practices, and Defendants deny any alleged Trademark Infringement, Breach of Contract, Declaratory Judgment Request, and Violation of the Texas Deceptive Trade Practices. The facts, the evidence, the law document that the action filed by Plaintiff is vexatious and frivolous in that it is insufficient on its face, is interposed for the mere purpose of harassment. There is no rational argument based upon the evidence or law in support of the claim. The Plaintiff lack standing to bring this lawsuit and because the Plaintiff lack standing as a matter of law this Honorable Court lacks jurisdiction.

JURISDICTION AND VENUE

The United States Patent and Trademark Office ("USPTO") have confirmed that "a state court cannot grant Plaintiff's a federal trademark which they have abandoned. Plaintiff is attempting to utilize a State Court as an appellate Court over a Federal Agency Determination. Defendants Linda Restrepo and Carlos Restrepo deny that this Court has jurisdiction over the subject matter. Defendants have registered their "domain name" and the content of their commercial website with GoDaddy an Arizona corporation.

Federal District Court's exercise of personal jurisdiction over the Plaintiff is proper because: (1) the Plaintiff consented to personal jurisdiction in Arizona District Court for disposition of disputes involving domain names registered through GoDaddy.com. (2) By contracting to the registration of the "allianceriggersandconstructors.com" website through Go Daddy, Inc. ("Go Daddy"), the Plaintiff consented to personal jurisdiction in Arizona District Court

for resolution of this dispute.

By mandate of the United States Department of Commerce any domain name disputes are to be determined by the Internet Corporation for Assigned Names and Numbers ("ICANN") therefore, the County Court has no jurisdiction to review the matter. The County Court has no jurisdiction over issues which relate to diverse citizenship. This Uniform Domain Name Dispute Resolution Policy (the "Policy") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN"), is incorporated by reference into your Registration Agreement, and sets forth the terms and conditions in connection with a dispute between you (Plaintiff) and any party other than us (the registrar/Defendants) over the registration and use of an Internet domain name. The Plaintiff through its registered agent Phillip Cordova, and the contract with the Defendant Linda S. Restrepo to provide an "E-commerce Internet Platform including mounting of said Platform to the Internet," contractually agreed to Go Daddy's Universal Terms of Service for Go Daddy Software and Services as follows:

"For the adjudication of disputes concerning the use of any domain name registered with Go Daddy, You agree to submit to jurisdiction and venue in the U.S. District Court for the District of Arizona located in Phoenix, Arizona" and "You agree that any action relating to or arising out of this Agreement shall be brought in the state or federal courts of Maricopa County, Arizona, and you hereby consent to (and waive all defenses of lack of personal jurisdiction and forum non conveniens with respect to) jurisdiction and venue in the state and federal courts of Maricopa County, Arizona."

The Federal District Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, because this action arises under the laws of the United States. As previously stated, Plaintiff's Complaint asserts a federal-question claim for trademark infringement in violation of the Lanham Act, 15 U.S.C. § 1111, et seq. Venue is also proper because Plaintiff's voluntarily

consented to venue in Arizona. *Productive People. LLC v. Ives Design* _2009 WL 1749751, *2 (D.Ariz.. Jun 18, 2009) ("A contract's forum selection clause alone is sufficient to confer personal jurisdiction and venue[.]")

A contract's forum selection clause alone is sufficient to confer personal jurisdiction and venue. Plaintiff has contracted for an E-commerce Internet Platform to include mounting of said Platform to the Internet, the internet goes beyond state borders and would be beyond the jurisdiction of this court.

The Plaintiff have stated in their Petition (Plaintiff Petition Part III. (8) that their claims were for "damages in excess of the minimum jurisdictional limits of this Court" claims made by the Plaintiff *that affirmatively negates this court's jurisdiction.*

The Plaintiff invoked Federal Jurisdiction through their Trademark Application Serial No. 76711574 filed with the United States Patent and Trademark Office (USPTO) on May 18, 2012 and Plaintiff have maintained jurisdiction with the USPTO to the present date. The United States Patent and Trademark Office is a party to this litigation by the fact that they refused to grant the Plaintiff's purported Trademark. The USPTO's refusal of Plaintiff trademark application documents a previous "Alliance" Trademark Registration design mark and work mark USPTO Registration Number 3604909 to Alliance Steel, Inc., 3333 South Council Rd., Wheatland, Oklahoma 73097, an Oklahoma Corporation. The Steel Erectors Association of America ("SEAA") has utilized the Plaintiff's alleged trademark extensively and thus are parties to this litigation. SEAA Corporate Headquarters are located at 2216 W. Meadowview Rd., Ste. 115 Greensboro, NC 27407 .

Ives Design 2009 WL 1749751, *2 (D.Ariz.. Jun 18, 2009) ("A contract's

forum selection clause alone is sufficient to confer personal jurisdiction and venue[.]”), Plaintiff has contracted for an E-commerce Internet Platform to include mounting of said Platform to the Internet with forum selection in Arizona District Court, the Internet goes beyond state borders and would be beyond the jurisdiction of this court.

DEFENDANTS CLAIM COPYRIGHT, INTELLECTUAL PROPERTY RIGHTS AND FREEDOM OF SPEECH RIGHTS

Defendants claim 1st, 4th, and 14th Amendment Constitutional Rights, Freedom of Speech, intellectual property rights and copyright to the contents of their national internet based commercial website. In the case at hand, Defendants are the original producers, designers of original artistic content and authors of their Copyrighted Web Pages. At all times relevant to this matter, Defendants national internet based commercial website has contained an Intellectual property rights and copyright notices and Plaintiff are aware of this fact. Plaintiff claim that the Defendants "launched a website" to the internet, the internet goes beyond state borders and would be beyond the jurisdiction of this court.

PLAINTIFF’S LACK OF STANDING TO BRING THIS LAWSUIT

Standing is a threshold issue that must be proved in every inter parties case. *Lipton industries, Inc., v. Ralston Purina Co.*, 670 F.2d 1024, 213 USSPQ 185, 188 (CCPA 1982). A plaintiff’s belief in damage must have some reasonable basis in fact. *Coach Services, Inc. v. Triumph Learning LLC*, 668, F3d 1356, 101 USPQ2d 1713, 1727 (Fed Cir. 2012). To establish standing, it must be shown that the Plaintiff has a real interest in the outcome of a proceeding, that is, the plaintiff must have a direct and personal stake in the outcome of the opposition.

It is clear that the plaintiff cannot as a matter of law, have any interest in a the generic words "riggers and constructors" which the Plaintiff has previously disclaimed to a Federal Agency, the USPTO. It is also clear as a matter of law that the Plaintiff cannot have any interest in the word "Alliance" which is a previous Trademark Registration design mark and work mark, USPTO Registration Number 3604909 belonging to Alliance Steel, Inc. an Oklahoma City, Oklahoma Corporation.

As a matter of law the Plaintiff has no real interest in either the generic words "riggers & constructors" nor the word "Alliance" which is a Federal Trademark of Alliance Steel, Inc. Second, by the Plaintiff's own admission 4 of the 6 most relevant factors enunciated *in re E.I du Pont de Nemours & Co.*, 476 F. 2d 1357, 177 USPQ 563 (CCPA 1973); those being: (1) the relatedness of the goods or service; (2) the similarity or dissimilarity of established likely to continue trade channels; (3) impulse versus careful sophisticated buyers; and (4) the nonexistence of a valid consent agreement; favor holding against likelihood of confusion, are NON existent in this case. The Plaintiff himself has stated to the USPTO a Federal Agency under penalty of perjury that, "how exactly could there ever be confusion between a developer of web pages (Defendants), and a provider of crane and erectors services (Alliance)".

Since Plaintiff has no legal interest in the domain name "allianceriggersandconstructors.com" or the "Alliance" Federal Trademark of Alliance Steel, Inc., and because there can never be any likelihood of confusion between Plaintiff's non-existent trademark and the Defendant, there is no basis in fact that Plaintiff has any direct personal or commercial interest in the outcome of the

proceeding and without such interest, Plaintiff does not have standing and Plaintiff's Petition must be dismissed.

**DEFENDANT'S SPECIAL EXCEPTIONS UNDER THE MANDATES OF
TEX. R. CIV. P. 45 (b), 47(a) RULE 90, 91, TO PLAINTIFF'S
FIRST AMENDED ORIGINAL PETITION**

Defendants cite the following law and cases as applicable to the case at bar:

"Pursuant to Tex. R. Civ. P. 45(b), 47(a), 90, and 91, *LaVernia Nursing Facility, Inc. d/b/a Country Care Manor*, ("Defendant"), files its Special Exceptions to Plaintiff's First Amended Petition, and would show that Plaintiff's allegations are vague, general, and deprive Defendant of the "fair notice" required under the Rules of Civil Procedure. The Texas Rules of Civil Procedure authorize special exceptions because each party is entitled to notice of his adversary's claims and defenses, as well as notice of the relief sought. *Perez v. Briercroft Serv. Corp.*, 809 S.W.2d 216, 218 (Tex. 1991). Rules 45 and 47 require pleadings to give "fair and adequate notice" of each claim asserted so that the opposing party will have information sufficient to enable him to prepare a defense. *Paramount Pipe & Sup. Co. v. Muhr*, 749 S.W.2d 491, 494-95 (Tex. 1988).

The test for determining pleading sufficiency "should be whether an opposing attorney of reasonable competence, with the pleadings before him, can ascertain the nature and the basic issues of the controversy and the testimony probably relevant." 2 McDonald, Texas Civil Practice § 5.05 at 15-16 (1970). If pleadings are insufficient and not properly amended, they may be stricken and the case dismissed. *Portugal v. Jackson*, 647 S.W.2d 393, 394 (Tex. App.-Waco 1993, writ ref d n.r.e.)".

Accordingly Defendants re-allege and resubmit their special exceptions herein by as Exhibit 1, Defendants re-allege and resubmit their special exceptions

herein by reference as if submitted in their entirety. These special exceptions are filed against the Plaintiff's First Amended Original Petition (Exhibit 1).

DEFENDANTS STATE THEIR AFFIRMATIVE DEFENSES

Each and every Affirmative Defense claimed by the Defendants/Counterclaimants is in response to each and every Cause of Action claimed by the Plaintiff's in their Amended Original Petition to include but not limited to: (1) Trademark infringement/Unfair Competition, (2) Breach of Contract, (3) Declaratory Judgment Request, (4) Violation of the Texas Deceptive Trade Practices Act, (5) Attorneys' Fees. These affirmative defenses claimed by the Defendants/Counterclaimants are incorporated by reference into each specific Cause of Action claimed by the Plaintiff/CounterDefendants Amended Original Petition as if fully set forth therein. These affirmative defenses may be specifically interposed for the purpose of clarity in response to a particular Cause of Action claimed by the Plaintiff/CounterDefendants. However, the failure to specifically incorporate any affirmative defense should not be construed as a waiver of the Defendants/Counterclaimants Affirmative Defenses. Defendants/Counterclaimants do not waive any Affirmative Defenses and Defendants/Counterclaimants reserve the right to supplement.

Affirmative Defense 1 - Failure to State A Claim.

Plaintiff/CounterDefendants has failed to state claims upon which relief can be granted. It has long been the rule in Texas that Plaintiff/CounterDefendants bear the burden of pleading and proving how they were injured and by whom. In the instant case Plaintiff/CounterDefendants have simply filed abstract fraudulent allegations and demanded that the Defendants/Counterclaimants prove otherwise.

Affirmative Defense 2 - Collateral Estoppel

Defendants/Counterclaimants plead the affirmative defense of collateral estoppel. The Plaintiff/CounterDefendants Claim of Trademark for the descriptive words "riggers & constructors" "Alliance" has been "fully and fairly ruled upon" by the United States Patent and Trademark Office (USPTO).

Affirmative Defense 3- Duress

Defendants/Counterclaimants plead the affirmative defense of duress in that Plaintiff/CounterDefendants Petition is based on a knowingly and wantonly malicious attempt to cause Defendants/Counterclaimants injury, economic duress and to damage their ability to earn a living and intentionally harm their business.

Affirmative Defense 4 - Equitable Estoppel

Defendants/Counterclaimants plead the affirmative defense of Equitable Estoppel. The Plaintiff/CounterDefendant have made false representations and concealed material facts in their Petition.

Affirmative Defense 5

Plaintiff use of the descriptive words "alliance riggers & constructors" as described in Plaintiff's Complaint, does not constitute trademark use. Defendants use of the descriptive words "alliance riggers & constructors" as described in Plaintiff's Complaint, is fair use under the Trademark Act.

Affirmative Defense 6

Plaintiff's purported "alliance riggers & constructors" trademark has not acquired distinctiveness or secondary meaning as a trademark for the scope of goods and services alleged by Plaintiff.

Affirmative Defense 7

There is no likelihood of confusion, mistake, or deceit.

Affirmative Defense 8

The phrase "alliance riggers & constructors" is not a famous trademark.

Affirmative Defense 9

There is no likelihood of dilution.

Affirmative Defense 10

Defendant's actions are and have been innocent and not willful.

Affirmative Defense 11

The phrase "alliance Riggers & Constructors" alone and in combination with other words has been registered in the U.S. Patent and Trademark Office by others, including registrations in the same or similar classes of goods or services as Plaintiff and accordingly, is at best a weak and diluted phrase.

Affirmative Defense 12

To the extent Plaintiff claim any alleged trademark rights to the name "alliance riggers and constructors" those rights are weak, narrow, and exist in a crowded field of competing descriptive names uses and ordinary, plain-English uses, as evidenced by the USPTO ruling against Plaintiff trademark application on September 14, 2012.

Affirmative Defense 13

Plaintiff and its predecessors in alleged rights to the purported "Alliance Riggers & Constructors" trademark officially abandoned on April 15, 2013 any trademark rights they claim in "alliance Riggers & Constructors" and by acquiescing in others' use of the phrase and/or by failing to adequately police the purported mark.

Affirmative Defense 14

There is no confusion between the Construction Services rendered by the Plaintiff and the Consulting/Marketing Services rendered by the Defendants.

Affirmative Defense Collateral Estoppel 15

Defendants plead the affirmative defense of collateral estoppel. The Plaintiff Claim of Trademark has been "fully and fairly ruled upon" by the United States Patent and Trademark Office.

Affirmative Defense Duress 16

Defendants plead the affirmative defense of duress in that Plaintiff meritless Petition is based on a malicious attempt to cause them economic duress, injury, severe emotional duress and to damage their ability to earn a living and intentionally harm their business.

Affirmative Defense Equitable Estoppel -17

Defendants plead the affirmative defense of Equitable Estoppel. The Plaintiff have made false representations and concealed material facts in their Petition.

Affirmative Defense Failure of Consideration -18

Defendants plead the affirmative defense of Failure of Consideration. The Plaintiff failed to reach their promised performance to pay the Defendants money owed to the Defendants for work performed.

Affirmative Defense Failure to Mitigate Damages - 19

Defendants plead the affirmative defense of Failure to Mitigate Damages. The Plaintiff made no efforts to mitigate any amount and/or the total amount of any damages they stated in their Petition.

Affirmative Defense Failure to Satisfy a Condition Precent - 20

Defendants plead the affirmative defense of Failure to Satisfy a Condition Precedent. The Plaintiff failed to satisfy a condition precedent.

Affirmative Defense Illegality - 21

Defendants plead the affirmative defense of illegality in that the Plaintiff violation of the Contract is illegal and violates public policy.

Affirmative Defense Judicial Estoppel - 22

Defendants plead the affirmative defense of Judicial Estoppel. The Plaintiff have portrayed intentional-contradictions of their Petition in former proceedings in Federal Courts. The primary purpose of Judicial Estoppel is to safeguard the integrity of the judiciary from Plaintiff abuses.

Affirmative Defense Laches - 23

Defendants plead the affirmative defense of Laches. The Plaintiff Claim is barred by laches in that Plaintiff/CounterDefendants have unreasonably delayed in claiming any legal or equitable right they might have had and such delay on the part of the Plaintiff/CounterDefendants is to the detriment of the Defendants/Counterclaimants.

Affirmative Defense Undue Enrichment -24

The Defendants claim the affirmative defense of Undue Enrichment in that the Plaintiff accepted and benefitted from the work performed by the Defendants without paying for it.

Affirmative Defense Novation -25

The Defendants claim the affirmative defense of novation in that the Plaintiff accepted and benefitted from the work performed by the Defendants.

Affirmative Defense Proportionate Responsibility - 26

Defendants plead the affirmative defense of Proportionate Responsibility. The alleged damages of the Plaintiff were caused by the Plaintiff

and third parties who have contributed to alleged damages claimed by the Plaintiff.

Affirmative Defense Quasi-Estoppel - 27

The Defendants plead the affirmative defense of quasi estoppel in that the Plaintiff Petition is premised on a position inconsistent with one to which Plaintiff have previously acquiesced and have accepted a benefit.

Affirmative Defense Ratification -28

The Defendants plead the affirmative defense of ratification in that the Plaintiff approved by act, word or conduct and benefitted from all actions of the Defendants.

Affirmative Defense Statute of Fraud - 29

Defendants plead the affirmative defense of Statute of Frauds. The Plaintiff Petition is premised on fraud. The USPTO has confirmed that Alliance Steel, Inc. an Oklahoma City, Oklahoma Corporation have a previous "Alliance" Trademark Registration design mark and work mark, USPTO Registration Number 3604909.

Affirmative Defense Waiver - 30

Defendants plead the affirmative defense of Waiver. The Plaintiff have waived any alleged claims in that their conduct was inconsistent with claiming any such claim.

Affirmative Defense Mootness - 31

Defendants plead the affirmative defense of Mootness. The United

States Patent and Trademark Office has denied the Plaintiff Trademark Applications since 2012 and there is no longer a factual dispute and there is no longer a claim for the court to decide.

Affirmative Defense Clean-Hands Doctrine -32

Defendants plead the affirmative the defense of clean hands doctrine. The Plaintiff/CounterDefendants are proceeding in violation of a trademark owned by Alliance Steel, Inc. an Oklahoma City, Oklahoma Corporation which have a previous "Alliance" Trademark Registration design mark and work mark, USPTO Registration Number 3604909, claiming such Trademark as their own. Any party seeking equitable relief must come to the court with "clean hands. A court called upon to do equity should always consider whether the petitioning party has acted ... with unclean hands."

Affirmative Defense Failure to Join an Indispensable Party - 33

Defendant asserts the affirmative defense of failure to join an indispensable party(s), in that by the nature of the Plaintiff CounterDefendants Petition, Go Daddy's Universal Terms of Service for Go Daddy Software and Services apply and thus Go Daddy is an indispensable party to this litigation. Alliance Steel, Inc. an Oklahoma City, Oklahoma Corporation as owner of the "Alliance" trademark the Plaintiff/CounterDefendants claim, is also an indispensable party to this litigation. By mandate of the United States Department of Commerce any domain name disputes are to be determined by ICANN therefore the County Court has no jurisdiction to review the matter therefore ICANN is an indispensable party to this litigation. The United States Patent and Trademark Office is a party to this litigation by the fact that Plaintiff invoked the USPTO jurisdiction prior to the filing of the lawsuit and it refused to

grant the Plaintiff's purported Trademark. The Steel Erectors Association of America has utilized the Plaintiff's alleged trademark extensively and thus are parties to this litigation. SEAA Corporate Headquarters are 2216 W. Meadowview Rd., Ste. 115 Greensboro , NC 27407. The above listed entities are indispensable parties pursuant to Rules 12(b)(7) and 19 of the Federal Rules of Civil Procedure and for such failure , Plaintiff' Complaint should be dismissed with prejudice as to Plaintiff/CounterDefendants.

Affirmative Defense Unconstitutionality - 34

Defendant further asserts the affirmative defense that the statutory damages sought by Plaintiff are unconstitutionally excessive as applied, violate the Defendants Freedom of Speech Rights, Constitutional Rights and Intellectual Property Rights.

Affirmative Defense Proportionate Responsibility - 35

Defendant further asserts the affirmative defense of Proportionate Responsibility in that there are other parties responsible for Plaintiff alleged damages and for the Plaintiff failure to have a trademark.

Affirmative Defense Release - 36

Defendant further asserts the affirmative defense of Release in that the Plaintiff accepted and benefitted from the work performed by the Defendants under the contract.

Affirmative Defense Statute of Limitations - 37

Defendant further asserts the affirmative defense Statute of Limitations. Under the mandates of the Texas DTPA a lawsuit must be filed within two years after the date on which the false, misleading, or deceptive act or practice occurred. The Plaintiff DTPA Petition was filed three years after

the alleged event took place. Neither did the Plaintiff give notice to the Defendants before filing the DTPA Lawsuit. The Plaintiff's never advised the Defendants of their specific complaint, the amount of actual damages and expenses. Therefore, as a matter of law because the Defendants were never given 60 days to respond in accordance with the mandates of the Texas DTPA, all DTPA claims against the Defendants are barred by the Statute of Limitations.

**I.
DISCOVERY LEVEL**

1. Discovery is to be conducted in accordance with Rule 190.3 of the Texas Rules of Civil Procedure, Level 2.

**II.
PARTIES**

2. Defendants/Counterclaimants lack knowledge or information sufficient to form a belief about the truth of the allegations of Plaintiff/CounterDefendants Petition Paragraph 2, and therefore they are denied.

Carlos Restrepo Denies he is a party to this Lawsuit

3. Defendants/Counterclaimants Carlos E. Restrepo denies that he is a Defendant to this law suit for "breach of contract" due to the fact that Carlos Restrepo NEVER signed the contract with the subject of this litigation and had no contractual or other obligations to the Plaintiff. Defendants/Counterclaimants deny that Plaintiff/CounterDefendant have properly served Carlos E. Restrepo with Plaintiff/CounterDefendants's First Amended Original Petition. Carlos E. Restrepo denies that he has appeared and answered herein in that Carlos Restrepo has challenged and continues to challenge the Court's subject matter jurisdiction over the issues in this case.

Linda S. Restrepo Denies she is a party to this Lawsuit

4. Defendants/Counterclaimants Linda Restrepo denies that she is a Defendant to this law suit for "breach of contract" over the domain name. Plaintiff has made contradictory claims in an on-going Federal Litigation that "Linda S. Restrepo, notwithstanding the fact that she is not the registered owner of the Domain name" subject of this lawsuit. Since Plaintiff claims that Linda S. Restrepo is not the owner of the domain name she cannot be a party to this lawsuit over a domain name which Plaintiff states she has no ownership to. Linda Restrepo has no liability in this lawsuit because Plaintiff states she does not own the domain name subject of the lawsuit. Defendants/CounterClaimants avers that service was not in compliance with the Texas Rules of Civil Procedure, Rule 15, Writs and Process, and Rule 106, Method of Service. Defendant/Counterclaimant Linda Restrepo denies that she has been properly served. Defendant//Counterclaimant Linda Restrepo denies that she has been properly served in that service was never made upon her as required under Texas Rules of Civil Procedure, Rule 15, Writs and Procedures, and T.R.C.P. Rule 106, Method of Service. Defendant/Counterclaimant Linda Restrepo has not and will not waive her Due Process rights to be properly served. Linda Restrepo has challenged and continues to challenge the Court's subject matter jurisdiction over the issues in this case.

**III.
SPECIFIC DENIALS
TRADEMARK INFRINGEMENT/UNFAIR COMPETITION**

Defendants deny each and every trademark infringement/unfair competition allegation made by the Plaintiff and demand strict proof thereof.

Pursuant to Tex. R. Civ. P. 54, Defendant/Counterclaimants specifically

denies that all conditions precedent to Plaintiff/CounterDefendant's claims have been performed or have occurred. Pursuant to Tex. R. Civ. P. Rule 56 Defendants/Counterclaimants specifically denies that any items of special or consequential damages have occurred to the Plaintiff.

5. Defendants/Counterclaimants deny that the Plaintiff/CounterDefendant is the owner of a well known common-law trademark, ALLIANCE RIGGERS & CONSTRUCTORS in that the Plaintiff has officially and formally disclaimed the use of the generic words "Riggers & Constructors" in accordance with USPTO requirements that they do so. The name "Alliance" is the legally owned trademark of an Oklahoma Corporation Alliance Steel, Inc. domiciled at 3333 South Council Rd., Wheatland, Oklahoma 73097, who is the legal owner of the trademark name "Alliance" under Federal Trademark Registration 3604909. Defendants Counterclaimants deny that the Plaintiff has utilized the alleged common law trademark for a "long time" and demand strict proof thereof. Defendants deny that Plaintiff alleged trademark is well-known, in that Plaintiff is a small-town, regional contractor, known only to specific constructions firms in a limited area.

6. Defendants/Counterclaimants deny that they were required to obtain the permission or authority from Plaintiff/CounterDefendant prior to registering a domain name and demand the specific law in which Plaintiff/CounterDefendant rely on. Defendants/Counterclaimants deny that they have made multiple use of Plaintiff/CounterDefendant's common-law trademark in that the generic words "riggers & constructors" does not constitute a common law trademark. Defendants/Counterclaimants deny that any law exists in which Defendants/Counterclaimants are restricted from claiming ownership to a domain name and demand strict proof thereof. Plaintiff has made contradictory claims in an on-going Federal Litigation

that "Linda S. Restrepo, notwithstanding the fact that she is not the registered owner of the Domain name" subject of this lawsuit. Since Plaintiff claims that Linda S. Restrepo is not the owner of the domain name she cannot be a party to this lawsuit over a domain name which Plaintiff states she has no ownership to. Linda Restrepo demands strict proof that she has continued to maintain ownership over the domain name subject of this lawsuit.

7. Defendants/Counterclaimants deny that they have utilized Plaintiff/CounterDefendant's alleged trademark without permission or authority and further deny that they are in violation of any trademark infringement, or unfair competition under the laws of the State of Texas and demand strict proof thereof.

8. Defendants/Counterclaimants deny that any actions on their part are the result of any damages to the Plaintiff/CounterDefendant's and Defendants/Counterclaimants demand strict proof thereof. Defendants/Counterclaimants deny that this lawsuit is within the minimum jurisdiction limits of this court in that Plaintiff/CounterDefendants are claiming damages "above the minimum jurisdictional limits of this Court" and therefore by the Plaintiff own admissions and statements this Court lacks jurisdiction.

The Defendants deny that the Plaintiff own a trademark and demand strict proof thereof.

- The Office of the Secretary of State have submitted a "Certificate of Fact" which states that "no active or pending applications for trademark or service mark by the name ALLIANCE RIGGERS & CONSTRUCTORS, LTD". The United States Patent and Trademark office have documented that the Plaintiff on April 15, 2013 "ABANDONED" their trademark application which documents that the Plaintiff have no trademark.

- The Plaintiff has not complied with the requirements for registering a mark in the State of Texas Tex. Bus. & Com. Code §§ 16.01 et. seq.
- Plaintiff have no mark which is in compliance with Tex. Bus. & Com. Code §16.02(a) or Tex. Bus. & Com. Code §16.02(b).
- The mark is not provided for statewide registration.
- Although the Plaintiff assert they have a Trademark no such evidence exists in the Complaint. To the extent the Plaintiff alleges ownership of a trademark, Defendant is without knowledge and therefore denies these allegations and demands strict proof thereof:

Defendants deny the Plaintiff claim of "ownership" to a well known common law trademark and Defendants demand strict proof thereof. Said claim is void *ab initio* under 15 U.S.C. § 1052 (d) because Plaintiff is neither the owner of the mark, nor entitled to use the mark in commerce. The USPTO's refusal of Plaintiff trademark application documents a previous "Alliance" Trademark Registration design mark and work mark, USPTO Registration Number 3604909 to Alliance Steel, Inc., 3333 South Council Rd., Wheatland, Oklahoma 73097 an Oklahoma Corporation.

Defendants deny allegations of Plaintiff Petition III Trademark Infringement/ Unfair competition Paragraph 5 which states that Plaintiff is the owner of the "well known common law trademark", *Alliance Riggers and Constructors* and Defendants demand strict proof thereof. The USPTO has deemed that the words "Riggers and Constructors" are merely descriptive of the type of service and that Alliance Steel, Inc. an Oklahoma City, Oklahoma Corporation have a previous "Alliance" Trademark Registration design mark and work mark, USPTO Registration Number 3604909.

- Defendants deny that the descriptive words Alliance Riggers & Constructors is a "well-known" trademark and demand strict proof thereof.
- Defendants deny that they require "permission" or authority from Plaintiff to register a domain name and demand strict proof thereof.
- Defendants deny that Plaintiff have "authority" to issue domain name registrations to third parties and demand strict proof thereof.
- Defendants deny that they have made multiple use of the Plaintiff's trademark in that the Plaintiff have not documented that they ever owned a trademark. Defendants demand strict proof of a trademark owned by the Plaintiff.
- Defendants deny the allegation. Defendants utilized the descriptive words in accordance with a valid contract for that purpose.
- Defendants deny that they utilized Plaintiff's trademark without permission or authority and demand strict proof thereof.
- Defendants deny that the Plaintiff have the authority to restrict utilization of descriptive words on an international platform such as the internet and demand strict proof thereof.
- Defendant deny the allegations. Plaintiff has failed to state what trademark infringement and what unfair competition were undertaken and has failed to state a claim.
- Defendants' deny that the descriptive words "riggers & constructors" are the Trademark of the Plaintiff and demand strict proof thereof.
- Defendants deny that the word "Alliance" is the trademark of the Plaintiff and demand strict proof thereof.
- Defendants deny that they violated any trademark infringement and demand strict proof thereof. The first premise of a claim for "trademark infringement" is

that a trademark actually exists; Defendants demand strict proof of a trademark owned by the Plaintiff.

- Defendants deny that they have engaged in unfair competition and demand strict proof thereof.
- Defendants deny jurisdiction in the County Court at Law Number Five. (1) The Plaintiff contractually consented to personal jurisdiction in Arizona District Court for disposition of disputes involving domain names registered through the GoDaddy.com . (2) By contracting to the registration of the "AllianceRiggersandConstructors.com" website through Go Daddy,Inc. ("Go Daddy"), the Plaintiff consented to personal jurisdiction in Arizona District Court for resolution of this dispute.
- Defendants deny the allegation. Defendants utilized the descriptive words in accordance with a valid contract for that purpose.
- Defendants deny they have caused any direct or proximate damages to the Plaintiff and demand strict proof thereof.
- Defendants deny that Plaintiff has suffered damages in excess of the minimum jurisdiction limits of this court and demand strict proof thereof.
- Defendant, acting in accordance with said contract, has not violated any alleged trademark with Plaintiff failing to state a claim as to damages and minimal jurisdictional limits of the Court. Plaintiff has failed to state what or how the minimal jurisdictional limits of the Court have been met.

IV. VERIFIED PLEAS AND DENIALS

Defendant//Counterclaimants asserts the following verified denials under Tex. R. Civ. P. 93:

(1) Plaintiff/CounterDefendant does not have standing or the legal capacity to sue in this action or the Defendants/Counterclaimants does not have the legal capacity to be sued in this action. Tex. R. Civ. P. 93(1).

(2) Plaintiff/CounterDefendants are not entitled to recover in the capacity in which he sues or the Defendants/Counterclaimants are not liable in the capacity in which they were sued. Tex. R. Civ. P. 93(2).

(3) There is another action pending in a Federal Agency the USPTO between the same parties involving the same claim. Tex. R. Civ. P. 93(3), in which the Plaintiff/CounterDefendant's have legally disclaimed utilization of the words "alliance riggers and constructors".

(4) Defendant/Counterclaimants denies the genuineness of the endorsement or assignment of a written document upon which suit is brought. Tex. R. Civ. P. 93(8).

(5) The document sued upon is without consideration and/or consideration has failed in full or in part. Tex. R. Civ. P. 93(9).

(6) Defendant/Counterclaimants denies the account which is the foundation of the Plaintiff/CounterDefendant's action Tex. R. Civ. P. 93(10).

(7) Defendant /Counterclaimants also denies that all just and lawful offsets, payments, credits owed from the Plaintiff/CounterDefendants to the Defendants/Counterclaimants have been given or allowed. Tex. R. Civ. P. 185.

(8) Notice and proof of loss or claim for damages has not been given as alleged. Tex. R. Civ. P. 93(12)

(a) Notice and claim for attorney's fees under Tex. Civ. Prac. & Rem. Code §38.001 et seq. has not been given as alleged or required.

(b) Notice of claim under Tex. Bus. & Com. Code, Section 17.41. et. seq. Texas Deceptive Trade Practices Act has not been given as alleged or required.

(c) There is a defect of parties, plaintiff or defendant. Tex. R. Civ. P. 93(4). Not all relevant parties to this litigation have been enjoined.

(9) The document sued upon is without consideration and/or consideration has failed in full or in part. Tex. R. Civ. P. 93(9) and Plaintiff/CounterDefendants Petition is defective in that it fails to present any document in which they bring their claim.

(10) A plaintiff or defendant is not doing business under an assumed name or trade name as alleged. Tex. R. Civ. P. 93(14).

(11) Notice and claim for attorneys' fees under Tex. Civ. Prac. & Rem. Code § 38.001 et seq. has not been given as alleged or required. As a direct result of Attorney R. Wayne Pritchard's submission of false, fraudulent and perjured statements to the Court, as a matter of law he is not entitled to any legal fees.

(12) Notice and claim under Tex. Bus. & Com. Code, Section 17.41, et. seq., Texas Deceptive Trade Practices Act has not been given as alleged or required.

(13) Defendants/Counterclaimant deny that Plaintiff/CounterDefendant is the owner of the well known common law trademark "Alliance Riggers and Constructors" in that in an April 24, 2014 Trademark application they have officially and upon the demand of the USPTO an official government document have "disclaimed any claims to the words "Alliance Riggers & Constructors".

(14) Plaintiff/CounterDefendants's pleading deprives Defendant/Counterclaimant of the "fair notice" to which it is entitled under Tex. R. Civ. P.45(b) and 47(a), as without specific pleading, Defendant is unable to adequately prepare its defense.

V. BREACH OF CONTRACT

Defendants deny each and every breach of contract allegation made by the Plaintiff and demand strict proof thereof.

9. Plaintiff/CounterDefendant's Petition is defective on its face in that it does not state what contract the Petition is brought upon and/or when it was

signed. Defendants/Counterclaimants deny that they failed to design the alleged webpage as agreed and that Plaintiff/CounterDefendants Petition is defective on its face in that it did not state what was agreed in the alleged contract. Defendants/Counterclaimant state that the terms and conditions of the contract are specifically defined in said contract and cannot be modified or changed unilaterally by the Plaintiff/CounterDefendants some 3 yrs. later.

- Defendants/Counterclaimants deny that Plaintiff/CounterDefendant has suffered any damages as a result of the webpage.
- Defendants/Counterclaimants deny that any conduct by them has resulted in damages to the Plaintiff/CounterDefendant.
- Defendants/Counterclaimants deny that Plaintiff/CounterDefendants have been damaged in any manner as a result of any action taken by the Defendants/Counterclaimants.
- Defendants/Counterclaimants deny that this lawsuit is within the minimum jurisdiction limits of this court in that Plaintiff/CounterDefendants are claiming damages "above the minimum jurisdictional limits of this Court".

VI. DEFENDANT'S VERIFIED PLEAS AND DENIALS

Defendants/Counterclaimants asserts the following verified denials under Tex. R. Civ. P. 93:

- (1) Plaintiff/CounterDefendants does not have the standing, legal capacity to sue in this action or the Defendants/Counterclaimants does not have the legal capacity to be sued in this action. Tex. R. Civ. P. 93(1).
- (2) Plaintiff/CounterDefendants are not entitled to recover in the capacity in which they sue or the Defendant/Counterclaimant is not liable in the capacity in which they were sued. Tex. R. Civ. P. 93(2).

(3) There is another action pending in a Federal Agency the USPTO between the same parties involving the same claim. Tex. R. Civ. P. 93(3), in which the Plaintiff/CounterDefendant's have legally disclaimed utilization of the words "alliance riggers and constructors", therefore based on the doctrine of res judicata they are barred from claiming any rights to said words in this Petition.

(4) There is a defect of parties, plaintiff or defendant. Tex. R. Civ. P. 93(4). Not all relevant parties to this litigation have been enjoined.

(5) The document sued upon is without consideration and/or consideration has failed in full or in part. Tex. R. Civ. P. 93(9) and Plaintiff/CounterDefendants Petition is defective in that it fails to present any document in which they bring their claim.

(6) Notice and proof of loss or claim for damages has not been given as alleged. Tex. R. Civ. P. 93(12).

- Notice and claim for attorneys' fees under Tex. Civ. Prac. & Rem. Code § 38.001 et seq. has not been given as alleged or required. As a direct result of Attorney R. Wayne Pritchard's submission of false, fraudulent and perjured statements to the Court, as a matter of law he is not entitled to any legal fees.

- Notice and claim under Tex. Bus. & Com. Code, Section 17.41, et seq., Texas Deceptive Trade Practices Act has not been given as alleged or required.

(7) Defendants/Counterclaimants deny that Plaintiff/CounterDefendants are the owner of the well known common law trademark "Alliance Riggers and Constructors" in that in an April 24, 2014 Trademark application they have officially and upon the demand of the USPTO an official federal government document have "disclaimed any claims to the words "Alliance Riggers & Constructors". Defendants further object to and deny that the Plaintiff are owners of a "well known" common law trademark.

(8) Defendants/Counterclaimants deny that they are in violation of the Texas Deceptive Trade Practices Act, Defendants/Counterclaimants further deny that they represented any characteristics, use or benefits which they did not have.

Defendants/Counterclaimants state that the terms and conditions of the contract are specifically defined in said contract.

(9) Defendants/Counterclaimants deny that they represented services of a particular standard, quality or grade when they were of another. Defendants/Counterclaimants state that the terms and conditions of the contract are specifically defined in said contract.

(10) Defendants/Counterclaimants deny that the agreement conferred or involved rights, remedies or obligations which it did not have or involve and that Defendants/Counterclaimants are not in violation of Section 17.46(b)(7) of the TDPA; Defendants/Counterclaimants demand strict proof of the "agreement" "the alleged rights conferred or involved rights of said alleged agreement", "the remedies or obligation said alleged agreement contained" and the date said alleged agreement was signed.

(11) Defendants/Counterclaimants deny that they failed to disclose information concerning services and that they are not in violation of Section 17.46(b)(24) of the TDPA. Defendants/Counterclaimants state that the terms and conditions of the contract are contained in the contract.

(14) Defendants/Counterclaimants deny that they "failed to disclose information concerning services which was known at the time of the transaction, when such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information

been disclosed in violation of Section 17.45(b)(24) of the TDPA” and demand strict proof thereof.

- i) Defendants demand strict proof of what “information” was known at the time of the alleged agreement.
- ii) Defendants demand strict proof of the alleged agreement.
- iii) Defendants demand strict proof of what information they are alleged to have failed to disclose.

(15) Defendants/Counterclaimants deny that they engaged in any unconscionable actions or course of actions and that Defendants/Counterclaimants are not in violation of Section 17.50(a)(3) of the TDPA.

(16) Defendants/Counterclaimants deny that Section 37.009, Texas Declaratory Judgment Act is applicable in this case as Plaintiff/CounterDefendants have failed to state a claim. Defendants/Counterclaimants further avers that Plaintiff/CounterDefendants have breached its contract with Defendant by failing to pay for services rendered.

(17) Defendants/Counterclaimants deny that Plaintiff/CounterDefendants are entitled to relief in accordance with Section 37.009 because this action is frivolous and without merit, Defendants/Counterclaimants are entitled to damages.

(18) Defendants//Counterclaimants Linda Restrepo and Carlos Restrepo deny any alleged wrongdoing, and Defendants/Counterclaimants deny Plaintiff/CounterDefendants are entitled to any relief it seeks in its Complaint. Defendants/Counterclaimants demand declaratory judgment in its favor and against Plaintiff/CounterDefendants on each and every count and claim for liability and damages.

**VII.
PLAINTIFF'S DECLARATORY JUDGMENT REQUEST**

Defendants deny each and every allegation made by the Plaintiff for Declaratory Judgment and demand strict proof thereof.

10. Defendant admit that they submitted an invoice to the Plaintiff for work which the Defendants performed and the Plaintiff have refused to pay for. Defendants state that they are entitled to be paid for work they have performed and for which the Plaintiff have accepted and benefitted from.

(a) Defendants admit that Plaintiff have breached the contract by failing to pay for the work which was performed by the Defendants.

(b) Defendants deny the request for Declaratory Judgement. Defendant acknowledges that Plaintiff has breached the contract between the parties. 317 S.W. 3d 871.

(c) Defendants deny that the Plaintiff "has not" breached the Contract and demand strict proof thereof.

(d) Defendants deny that the Plaintiff "does not owe Defendants any sum or money" and demand strict proof thereof.

(e) Defendant disagrees that Plaintiff has not breached the contract between the parties and avers that Plaintiff's action represents a frivolous action against Defendant.

11. Defendants deny that Plaintiff is "not" in breach of contract and that Plaintiff "does not owe" Defendants any amounts of money and demand strict proof thereof. Plaintiff have not presented one argument to support their allegations that they do not owe the Defendants money.

12. Defendants deny that Section 37.009, Texas Declaratory Judgment Act is applicable in this case as Plaintiff has failed to state a claim. Defendants further avers that Plaintiff has breached its contract with Defendants by failing to pay for services rendered.

13. Defendants deny Paragraph 13 and demand strict proof thereof. Defendants deny that Plaintiff is entitled to relief in accordance with Section 37.009 and that

because this action is frivolous and without merit, Defendants are entitled to damages.

- Defendants/Counterclaimants state that Plaintiff's have breached the Contract.
- Defendants/Counterclaimants state that the Plaintiff's have breached the Contract and have not paid the Defendants/Counterclaimants the total sums for work which they have performed.
- Defendants/Counterclaimants deny that Plaintiff is entitled to a Declaratory Judgment and Defendants/Counterclaimants request that pursuant to Section 37.001 et. seq., of the Texas Civil Practice and Remedies Code, referred to as the Texas Declaratory Judgment Act, this Court declare that Defendants are not in breach of Contract and that the Plaintiff pay all monies it owes to the Defendants.
- Defendants/Counterclaimants deny that Plaintiff is entitled to recover any damages, or money from Defendants either jointly or severally, pursuant to Section 37.009 of the Texas Declaratory Judgment Act. Defendants/Counterclaimants deny that Plaintiff is entitled to recover any attorneys' fees which they have incurred based on their own abuses and breach of contract.
- Defendants/Counterclaimant deny that Plaintiff are entitled to any exemplar damages and that Plaintiff/CounterDefendant's request for exemplary damages is limited by Tex. Civ. Prac. & Rem. Code §41.008 Limitation on Amount of Recovery.

**VIII.
FAILURE TO JOIN INDISPENSABLE PARTIES**

Plaintiff/CounterDefendants have failed to join all parties needed for just adjudication. Tex. R. Civ. P. 39.

**IX.
VIOLATION OF THE TEXAS DECEPTIVE TRADE
PRACTICES ACT**

Defendants deny each and every violation of the Texas Deceptive Trade Practices Act allegation made by the Plaintiff and demand strict proof thereof.

14. Defendants deny the allegations in Paragraph 14 and demand strict proof thereof. Defendants deny that it is violation of the Texas Deceptive Trade Practices Act. Defendant has not engaged in false, misleading, or deceptive acts or practices in the conduct of trade or commerce and is not in violation of the consumer protection division Sections 17.47, 17.58, or 17.61 of the code.

A. Defendants deny that they represented services had characteristics, use or benefits which they did not have and demand strict proof thereof. Defendants deny that they are in violation of Section 17.46(b)(5) of the Texas Deceptive Trade Practices Act ("TDPA") and demand strict proof thereof;

B. Defendants deny that services were of a particular standard, quality or grade when they were of another and demand strict proof thereof. Defendants demand strict proof of the "particular standard", "quality" or "grade" the Plaintiff claims in their Petition. Defendants deny that they are in violation of Section 17.46(b)(7) of the Texas Deceptive Trade Practices Act ("TDPA") and demand strict proof thereof;

C. Defendants deny that "an" agreement conferred or involved rights , remedies or obligations which it did not have or involve in violation of the Section 17.46(b)(12) of the TDPA and demand strict proof thereof. Defendants demand strict proof of the "agreement" "the alleged rights conferred or involved rights of said alleged agreement", "the remedies or obligation said alleged agreement contained" and the date said alleged agreement was signed.

D. Defendants deny that they "failed to disclose information

concerning services which was known at the time of the transaction, when such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed in violation of Section 17.45(b)(24) of the TDPA" and demand strict proof thereof.

- i) Defendants demand strict proof of what "information" was known at the time of the alleged agreement
- ii) Defendants demand strict proof of the alleged agreement
- iii) Defendants demand strict proof of what information they are alleged to have failed to disclose

E. Defendants deny that they engaged in "unconscionable actions" or "course of actions" in violation of Section 17.50(a)(3) of the TDPA and demand strict proof thereof.

15. Defendants deny Paragraph 15. Defendants deny that invoicing Plaintiff for monies due were the cause of any damages to the Plaintiff. Defendants demand strict proof as to an invoice being submitted for "services rendered" constituting violations of Section 17.50(a) of the TDPA.

(a) Defendants deny that its request for payment for services rendered in accordance with the contract with Plaintiff entitles Plaintiff to remedy under the referenced provisions and instead, entitles Defendants to remedy in accordance with the contract which has been complied with in full by Plaintiff.

16. Defendants deny Paragraph 16 and demand strict proof thereof. Defendants deny that its request for payment for services rendered is in violation of Section 17.50(b)(1) of the Texas Deceptive Trade Practices Act.

X. ATTORNEY'S FEES

17. Defendants deny Paragraph 17 and demand strict proof thereof. Defendants deny that they are in violation of the Texas Deceptive Trade Practices Act and demand strict proof thereof.

18. Defendants deny that Plaintiff is entitled to attorney fees for the filing of this vexatious, frivolous, false Petition.

XI.

DEFENDANTS RESPONSE TO PLAINTIFF'S PRAYER FOR RELIEF

Defendants Linda Restrepo and Carlos Restrepo deny any alleged wrongdoing, and Defendants deny Plaintiff are entitled to any relief it seeks in its Complaint. Defendants demand declaratory judgment in its favor and against Plaintiff on each and every count and claim for liability and damages.

XII.

DEMAND FOR JURY TRIAL

Defendants/Counterclaimants demands a trial by jury pursuant to Tex. R. Civ. P. 216.

WHEREFORE PREMISES CONSIDERED, Defendants/Counterclaimants pray that upon final hearing that Plaintiff/CounterDefendants take nothing by its claims; that Defendants/Counterclaimants recover their costs and reasonable and necessary attorneys' fees from Plaintiff/CounterDefendants; and for such other further relief to which Defendants may be entitled to inequity and in law. Defendants/Counterclaimants reserve the right to amend and supplement this petition as deemed necessary.

Defendants/CounterClaimants Linda S. Restrepo and Carlos E. Restrepo pray that Plaintiff/CounterDefendants be cited to appear and answer herein and, upon trial of this matter judgment against the Plaintiff/CounterDefendants, individually, jointly and severally, in the principal sum of \$17,000.00 plus interest on unpaid services fees and exemplary and punitive damages in an amount to be determined by a jury, for the following:

A. The court dismiss Plaintiff/CounterDefendants lawsuit petition against Defendants/Counterclaimants with prejudice against Plaintiff/CounterDefendants;

B. Award all damages, whether actual, consequential , exemplary or punitive to which Defendants/CounterClaimants are entitled;

C. Award reasonable comparative attorney's fees, reasonable consulting fees, costs of court and pre- and post-judgment interest at the highest rate allowed by law; costs of bringing this action, including related expenses of bring the action (including investigative expense) and business, professional and legal consultations;

D. Issue an order revoking any license enabling Plaintiff/CounterDefendants, Alliance Riggers & Constructors, LTD., to operate in the State of Texas and revoking any certificate authorizing Plaintiff/CounterDefendants, Alliance Riggers & Constructors, LTD., to do business in Texas if any judgment rendered in this case regardless of appeals has not been satisfied within three (3) months from the date of filing said final judgment; and;

E. Issue an order that Plaintiff/CounterDefendants are required to pay in full for all work which the Defendants/CounterClaimants have performed for the Plaintiff/ CounterDefendants.

F. Issue an order authorizing Defendants/Counterclaimants to place liens on all equipment and properties belonging to Plaintiff/CounterDefendants which were utilized as part of the contract if any judgment rendered in this case regardless of appeals has not been satisfied within three (3) months from the date of filing said final judgment; and;

G. The entry of judgment against Plaintiff/CounterDefendants in favor of Defendant/CounterClaimants Linda Restrepo and Carlos Restrepo.

H. That Plaintiff/CounterDefendants and all others in privity or acting in concert with Plaintiff/CounterDefendants, be permanently enjoined from asserting that Defendants/CounterClaimants ownership and use of the phrase "alliance riggers and constructors" complained of in Plaintiff/CounterDefendants Complaint constitutes trademark infringement, unfair competition, or any other violation or infringement of any alleged proprietary rights of Plaintiff/CounterDefendants.

I. Declaratory judgment that Defendants/CounterClaimants Linda Restrepo and Carlos Restrepo's are the rightful legal owners of the Internet domain name "allianceriggersandconstructors.com" and are entitled to its fair use for any purposes Defendants/CounterClaimants see fit and is a fair use protected under the assertion of use under the Trademark Act.

- Declaratory judgment in favor of the Defendants Linda S. Restrepo and Carlos E. Restrepo of no federal trademark infringement, false designation of origin, passing off or unfair competition under the Lanham Act, 15 U.S.C. § 1051 et seq.;

- Declaratory judgment in favor of the Defendants Linda S. Restrepo and Carlos E. Restrepo of no common law trademark infringement or unfair competition;

- Declaratory judgment in favor of the Defendants Linda S. Restrepo and Carlos E. Restrepo of no Texas trademark infringement under Texas Business and Commerce Code, Chapter 16: Trademarks.

- Declaratory judgment in favor of the Defendants Linda S.

Restrepo and Carlos E. Restrepo of no dilution under 15 U.S.C. § 1125;

- Declaratory judgment of invalidity of Plaintiff/CounterDefendants alleged "alliance riggers and constructors" trademark under the common law;

That this Court declare this to be an exceptional case and award Defendants/CounterClaimants Linda Restrepo and Carlos Restrepo their reasonable comparable attorneys' fees and costs in accordance with 17 U.S.C. § 1117; and for such other and further relief, in law and in equity to which Defendants/ CounterClaimants Linda S. Restrepo and Carlos E. Restrepo may show themselves justly entitled.

Dated this 1st day of June 2015.

Respectfully Submitted,

/S/ Carlos E. Restrepo

Carlos E. Restrepo, Pro Se
P.O. Box 12066
El Paso, Texas 79913
(915) 581-2732

/S/ Linda S. Restrepo

Linda S. Restrepo, Pro Se
P.O. Box 12066
El Paso, Texas 79913
(915) 581-2732

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of June 2015 a true and correct copy of the foregoing petition was forwarded via Efiletx.gov to: Wayne Pritchard, P.C. at: wpritchard@pritchlaw.com, Attorney of Record for Alliance Riggers & Constructors, Ltd. 300 East Main, Suite 1240 El Paso, Texas 79901, and Judge Carlos Villa at: pbustmante@epcounty.com.

/S/ Carlos E. Restrepo

IN THE COUNTY COURT AT LAW NUMBER 5
EL PASO COUNTY, TEXAS

ALLIANCE RIGGERS & CONSTRUCTORS, LTD.	§	
	§	
Plaintiff,	§	
	§	
v.	§	Cause No. 2012-DCV04523
	§	
LINDA S. RESTREPO & CARLOS E RESTREPO	§	
D/B/A COLLECTIVELY RDI GLOBAL SERVICES	§	Request Trial by Jury
and R&D INTERNATIONAL,	§	
	§	
Defendants/CounterClaimants	§	
	§	
v.	§	
	§	
ALLIANCE RIGGERS & CONSTRUCTORS, LTD.	§	
	§	
Plaintiff,CounterDefendants .	§	
	§	

**DEFENDANTS COUNTERCLAIM, SUIT ON SWORN ACCOUNT AND
DECLARATORY JUDGMENT REQUEST**

TO THE HONORABLE JUDGE:

Defendants/CounterClaimants counterclaim against Plaintiff/

CounterDefendant as follows:

Defendants invoke their rights under (TRCP 97(a), (b), right to file a counterclaim. Pursuant to TEX. R. CIV. P. 92, Defendants assert a general denial and requests that Plaintiff be required to prove the charges and allegations against Defendant by a preponderance of the evidence. This is a claim arising out of a Federal question presented by the Plaintiff. Plaintiff's Complaint purports to state causes of action for Trademark Infringement, Breach of Contract, Declaratory Judgment Request, and Violation of the Texas Deceptive Trade Practices Act. Defendants deny Plaintiff has stated any valid claims for Breach of Contract,

Declaratory Judgment Request, and Violation of the Texas Deceptive Trade Practices, and Defendants deny any alleged Trademark Infringement, Breach of Contract, Declaratory Judgment Request, and Violation of the Texas Deceptive Trade Practices. The facts, the evidence, the law document that the action filed by Plaintiff is frivolous in that it is insufficient on its face, and is interposed for the mere purpose of harassment. There is no rational argument based upon the evidence or law in support of the claim. The Plaintiff lack standing to bring this lawsuit and because the Plaintiff lack standing as a matter of law this Honorable Court lacks jurisdiction.

Defendants/Counterclaimants Linda S. Restrepo and Carlos E. Restrepo incorporate herein by reference, each and every allegation, answer, affirmative defense and denial contained in each of the paragraphs in the Defendants Amended Answer To Plaintiff's First Amended Original Petition. These affirmative defenses, answers, denials may be specifically interposed for the purpose of clarity in response to a particular Cause of Action claimed by the Plaintiff/CounterDefendant. However, the failure to specifically incorporate any affirmative defense should not be construed as a waiver of the Defendants/Counterclaimants Affirmative Defenses. Defendants/Counterclaimants do not waive any Affirmative Defenses and reserve the right to supplement.

I. DISCOVERY LEVEL

1. Defendants/Counterclaimants Linda S. Restrepo and Carlos E. Restrepo request an order that discovery be conducted in accordance with the provisions of Texas Rules of Civil Procedure Rule 190.4. Level 2 Discovery Plan.

II. PARTIES

1. Defendant/Counterclaimant Linda S. Restrepo is an individual whose principal address is P.O. Box 12066, El Paso, Texas 79913.
2. Defendant/Counterclaimant Carlos E. Restrepo is an individual whose principal address is P.O. Box 12066, El Paso, Texas 79913.
3. Alliance Riggers & Constructors, LTD., is an alleged limited partnership having its principal place of business at 1200 Kastrin, El Paso, Texas 79907. Its registered agent is Phillip Cordova.

III. JURISDICTION AND VENUE

4. The Plaintiffs Petition and therefore these counterclaims arise under Federal Trademark Laws, the Federal Declaratory Judgments Act, Title 28 U.S.C. §§ 2201 and 2202, the Lanham Act, 15 U.S.C §§ 1051 et seq.
5. Federal District Court has subject matter jurisdiction over the Plaintiffs Petition and these counterclaims under at least 28 U.S.C. §§ 2201 and 2202, 28 U.S.C. §§ 1331 and 1338, and 15 U.S.C. § 1121.
6. By its Complaint, Plaintiff/CounterDefendant has expressly charged Defendants/CounterClaimants with federal trademark infringement, Unfair Competition, Breach of Contract, trademark infringement, federal trademark dilution, all of which Defendants/CounterClaimants deny in their entirety.

IV. CONDITIONS PRECEDENT

7. All conditions precedent to Plaintiffs' claims for relief have been performed or have occurred.

V. COUNT ONE: BREACH OF CONTRACT

8. Alliance Riggers & Constructors, Ltd. has breached its contract with Defendants/Counterclaimants Linda S. Restrepo and Carlos E. Restrepo. A breach of contract occurs when: (1) there is a valid, enforceable contract; (2) the

Defendants/Counterclaimants performed, tendered performance of, or was excused from performing its contractual obligations; (3) the Plaintiff's/CounterDefendants breached the contract; and (a) the Plaintiff's/CounterDefendants breach caused the Defendants/CourterPlaintiffs injury.

9. The allegations contained in all of the paragraphs of this Counterclaim are hereby re-averred and re-alleged, for all purposes, and incorporated herein with the same force and effect as set forth verbatim herein.

10. On March 11, 2011 Defendant/CounterClaimant Linda S. Restrepo entered into a Contract ("Contract") with Alliance Riggers & Constructors, Ltd. The primary purpose of the contract was to design a webpage and Corporate Video for the Plaintiff/CounterDefendant which was to be uploaded to the internet by the Defendant/CounterClaimant Linda S. Restrepo.

11. During the course of the business relationship Plaintiff/CounterDefendant requested that further services be rendered. Plaintiff/CounterDefendant demanded incorporation of Alliance job sites into the video which at the time of the original contract did not exist. Plaintiff/CounterDefendant demanded that Defendant/CounterClaimant perform Liebherr Crane marketing and advertising services all of which consisted of work performed by the Defendants CounterClaimants that was above and beyond its scope of work in the initial contract. The initial contract between the parties was for a five (5) minute Corporate Video and a five (5) page Corporate webpage. The Plaintiff/CounterDefendant wanted more pages added to the Corporate webpage as well as the extension of the original 5 minute Corporate video contracted to a ten minute Corporate Video. Plaintiff/CounterDefendants also required that the Defendants/CounterClaimants produce an entry into the Steel Erectors Association of America (SEAA) Project of the Year Award for them, which

the Defendants/CounterClaimants won. Additionally the Plaintiff/CounterDefendant benefitted from a full-color 4 page write-up produced by the Defendants/CounterClaimants featured in the SEAA Connector National Magazine 2012 Edition. Because Plaintiff/CounterDefendant demanded Defendants/CounterClaimants do additional work outside the scope of the original contract, for entities not part of the contract, the contract was breached by the Plaintiff/CounterDefendant.

12. On April 28, 2012 Plaintiff/CounterDefendant accepted, signed for and received formal notice that the final webpage had been uploaded to the "Go Daddy" Commercial Website Platform and that the initial 5-page webpage which had initially been contracted for was increased to 24 pages and was accepted in accordance with GoDaddy's Forum selection clauses as such based on the prior written acceptance signature of Plaintiff/CounterDefendant.

13. Plaintiff/CounterDefendant further required that the Defendants/CounterClaimants do work for, market and add additional parties not part of the original contract to include C.F. Jordan Construction and Liebherr Cranes. Because Plaintiff/CounterDefendant demanded Defendants/CounterClaimants work for, and market companies not parties to the contract, the contract was breached by the Plaintiff/CounterDefendant.

14. Plaintiff/CounterDefendant failure and refusal to pay Defendants/CounterClaimants Linda S. Restrepo and Carlos E. Restrepo amounts due based on the work performed by the Defendants/CounterClaimants, the terms and subsequent modifications of the Agreement constitute a failure to comply with the Agreement and thus a breach of the contract on the part of the Plaintiff/CounterDefendant.

15. By changing the terms in the course of the contract with no mutual consideration represents a breach on the part of the Plaintiff/CounterDefendant.

16. These breaches of contract by Plaintiff/CounterDefendant have resulted in severe emotional stress, injury, financial hardship and other damages to Defendants/CounterClaimants Linda S. Restrepo and Carlos E. Restrepo in the amount owed of \$17,000 plus interest in addition to exemplary, punitive and other damages. Defendants/CounterClaimants Linda S. Restrepo and Carlos E. Restrepo seek to recover damages from Plaintiff/CounterDefendant, individually, jointly and severally.

17. As a direct and proximate result of the conduct of the Plaintiff/CounterDefendant and their breach of the Contract and modifications As described above, Defendants/CounterClaimants Linda S. Restrepo and Carlos E. Restrepo have had to spend the last thirty five months to research legal case law, file motions, incur costs and defend and prosecute their claim against Plaintiff/CounterDefendant. Defendants/CounterClaimants seek the recovery of all costs for amounts owed, inconvenience, severe emotional duress, injury, harassment, time invested at a prevailing legal rate, out-of-pocket expenses and opportunity costs losses in excess of \$500,000.00 have incurred or caused by Plaintiff/CounterDefendant breaches. In accordance with Texas Rules of Civil Procedure, the amount of monetary and non-monetary relief that is sought by the Defendants/CounterClaimants is: (4) monetary relief over \$200,000 but not more than \$1,000,000.

18. Further, these unlawful acts and practices were done knowingly and have been a producing cause of injury and damage to Defendants/CounterClaimants.

19. Defendants/CounterClaimants. are also entitled to any other relief the Court determines is proper.

VI. COUNT TWO: QUANTUM MERUIT

20. The allegations contained in all of the paragraphs of this Counterclaim are hereby re-averred and re-alleged, for all purposes, and incorporated herein with the same force and effect as set forth verbatim herein.

21. The Defendants/Counterclaimants Linda S. Restrepo and Carlos E. Restrepo make a claim against Plaintiff/CounterDefendant Alliance Riggers & Constructors, Ltd., for recovery in in quantum meruit. Plaintiff/CounterDefendant non-payment for the services rendered would result in an unjust enrichment to Plaintiff/CounterDefendant who have benefited by Defendants/Counterclaimants work.

22. Defendants/Counterclaimants furnished valuable services and materials to the Plaintiff/CounterDefendants. The services and/or materials were furnished to the Plaintiff's/CounterDefendant who were sought to be charged; the services and/or materials were accepted by Plaintiff/CounterDefendant who was sought to be charged.

23. The services and/or materials were furnished and accepted under such circumstances that Plaintiff/CounterDefendant accepting the services and/or materials was reasonably notified that the Defendants/Counterclaimants, in performing, expected to be paid by the party who accepted the services and/or materials.

24. The Defendants/Counterclaimants, services, marketing strategy, consulting, and production of a webpage, a full-color Magazine Feature Article,

Corporate video, SEAA Award Video, HD Pictures, slideshows, Liebherr cranes marketing, undertaken for the Plaintiff/CounterDefendant sought to be charged.

25. Based on the work of the Defendants/Counterclaimants a benefit of value was conferred upon the Plaintiff/CounterDefendant who were featured on the "Cover" of a national publication as well as a four-page full colored article contained in the 2012 Edition of the SEAA Connector Magazine a National publication. The Advertising rate card of the SEAA Connector document that a front page cover and 4 page full color presentation in their magazine would amount to \$9,235.00. The Plaintiffs/ CounterDefendants have not paid for this benefit and it is inequitable for the Plaintiffs/ CounterDefendants to accept the benefits without payment of its value.

26. Defendants/CounterClaimants Linda S. Restrepo and Carlos E. Restrepo performed work above the scope of their initial contract. Plaintiff/ CounterDefendant accepted and benefitted from this extra work and Plaintiff/ CounterDefendant knew that Defendants/CounterClaimants Linda S. Restrepo and Carlos E. Restrepo expected compensation for the work provided. Defendants/ CounterClaimants Linda S. Restrepo and Carlos E. Restrepo thus seek to recover from Plaintiff/CounterDefendant the value of all work it provided for the services, marketing strategy and consulting, production of a webpage, a full-color Magazine Feature Article in the 2012 Edition of the SEAA Connector Magazine, Corporate video, SEAA Award Video, HD Pictures, slideshows, Liebherr cranes marketing, plus accumulated interest as the value of the extra work it provided to Plaintiff/ CounterDefendant pursuant to the doctrine of quantum meruit in addition to punitive and exemplary damages.

27. After accepting, utilizing and benefitting from Defendants/Counterclaimants, services, marketing strategy and consulting, production of a webpage, a full-color Magazine Feature Article in the 2012 Edition of the SEAA Connector Magazine, Corporate video, SEAA Award Video, HD Pictures, slideshows, Liebherr cranes marketing, the Plaintiff/CounterDefendant have failed and refuses to pay the reasonable value of the materials and labor despite numerous demand for payment.

28. The Defendants/Counterclaimants seek remedy in their quantum meruit claim submitted herein in order that the Plaintiff/CounterDefendant be required to pay the reasonable value of the materials or services provided by the Defendants/Counterclaimants.

VII. COUNT THREE: UNJUST ENRICHMENT

29. The allegations contained in all of the paragraphs of this Counterclaim are hereby re-averred and re-alleged, for all purposes, and incorporated herein with the same force and effect as set forth verbatim herein.

30. The Defendants/Counterclaimants Linda S. Restrepo and Carlos E. Restrepo make a claim against Plaintiff/CounterDefendant Alliance Riggers & Constructors, Ltd. for unjust enrichment.

31. The Plaintiff/CounterDefendant continued for two years with their vexatious, frivolous lawsuit filed on June 20, 2012 demanding damages in "excess of the jurisdictional limits of this court", and their legal harassment of the Defendants/CounterClaimants Linda S. Restrepo and Carlos E. Restrepo. Contrary to his claim Plaintiff/CounterDefendant travelled to New Orleans, Louisiana on March 2013 to accept the coveted SEAA POY 2011 award Defendants/CounterClaimants Linda S. Restrepo and Carlos E. Restrepo have won for them.

32. Plaintiff/CounterDefendant publicized in public newspaper articles announcing their award won for them by the Defendants/CounterClaimants and having the url of the video produced and copyrighted by the Defendants/CounterClaimants posted in a newspaper article and public forum without the Defendants/CounterClaimants permission or authority.

33. Plaintiff/CounterDefendant have been awarded contracts and work, public recognition, good will and added value from 2012 to the present based on Defendants/CounterClaimants, services, marketing strategy and consulting, and production of a webpage, a full-color Magazine Feature Article in the 2012 Edition of the SEAA Connector Magazine, Corporate video, SEAA Award Video, HD Pictures, slideshows, Liebherr cranes marketing, the Plaintiff/CounterDefendant have failed and refuses to pay the reasonable value of the materials and labor despite numerous demand for payment.

34. The Plaintiff/CounterDefendants acknowledged or recognized that a benefit and value was conferred.

35. Plaintiff/CounterDefendants accepted and retained the benefit and value under circumstances in which retention without payment would be unjust.

36. Plaintiff/CounterDefendant have been unjustly enriched and have been bestowed with benefits and value by the services and work of the Defendants/CounterClaimants the circumstances are such that it would be inequitable for the Plaintiff/CounterDefendant not to pay for the benefits and value they have received.

37. Plaintiff/CounterDefendant have been unjustly enriched by their conduct described above by their receipt of a coveted national SEAA Project of the Year 2011 award, national attention and recognition, and work, value, goods and services which they have refused to pay for.

38. Based on Plaintiff/CounterDefendant unjust enrichment, Defendants/CounterClaimants seek their unjust enrichment action herein in order that the Plaintiff/CounterDefendant pay the value of the benefit bestowed from the benefit they have received to include awarded contracts and work, public recognition, good will and added value from 2012 to the present based on Defendants/CounterClaimants, work, services, marketing strategy and consulting, and production of a webpage, a full-color Magazine Feature Article in the 2012 Edition of the SEAA Connector Magazine, Corporate video, SEAA Award Video, HD Pictures, slideshows and Liebherr cranes marketing.

39. Plaintiff/CounterDefendant non-payment for the services rendered and value and benefits gained would result in an unjust enrichment to Plaintiff/CounterDefendant who have unjustly benefited by Defendants/Counterclaimants work.

VIII. COUNT FOUR: DECLARATORY JUDGMENT

40. The allegations contained in all of the paragraphs of this Counterclaim are hereby re-averred and re-alleged, for all purposes, and incorporated herein with the same force and effect as set forth verbatim herein.

41. This is an action for declaratory judgment that Defendants/CounterClaimants invoking Freedom of Speech First Amendment Rights have made fair use Under 15 U.S.C. §1115(b)(4) of the phrase "alliance riggers and constructors".

42. This is an action for declaratory judgment that Defendants/CounterClaimants did not breach the Contract as alleged by the Plaintiff/CounterDefendant and furthermore that the Plaintiff/CounterDefendant owe Defendants/CounterClaimants money for services rendered.

43. Defendants/CounterClaimants request that pursuant to Section 37.001 et. seq., of the Texas Civil Practice and Remedies Code, that the Court declare that Defendants/CounterClaimants are not in breach of the Contract.

44. This is an action for declaratory judgment that Defendants/CounterClaimants did not engage in any violations of the Texas Deceptive Trade Practices Act as alleged by the Plaintiff/CounterDefendant.

45. Defendants/CounterClaimants are entitled to recover from Plaintiff/CounterDefendant, jointly and severally, pursuant to Section 37.009 and 38.001 of the Texas Declaratory Judgment Act, their reasonable and necessary attorneys' fees, equivalent attorney's fees incurred in this action.

46. An actual and justiciable controversy exists between Plaintiff/CounterDefendant and Defendants/CounterClaimants with respect to alleged federal trademark infringement, copyright, intellectual property, freedom of speech, breach of contract, Deceptive Trade Practices violations and/or under the Lanham Act, 15 U.S.C. § 1051 et seq., trademark infringement and unfair competition under the common' law and trademark infringement under Texas Business and Commerce Code, Chapter 16: Trademarks.

47. A declaration that Defendants/CounterClaimants use of the words "riggers and constructors" in conjunction with a contract for said purpose does not constitute a trademark use and is a fair use of the English phrase and is appropriate.

Declaratory Judgment of No Federal Trademark Infringement. False Designation of Origin. Passing Off or Unfair Competition

48. The allegations contained in all of the paragraphs of this Counterclaim are hereby re-averred and re-alleged, for all purposes, and incorporated herein with the same force and effect as set forth verbatim herein.

49. This is an action for declaratory judgment of no federal trademark infringement, false designation of origin, passing off and unfair competition under the Lanham Act, 15 U.S.C. § 1051 et seq.

50. An actual and justiciable controversy exists between Plaintiff/CounterDefendant and Defendants/CounterClaimants with respect to alleged federal trademark infringement, breach of contract, intellectual property rights, copyright, Deceptive Trade Practices violations and/or under the Lanham Act, 15 U.S.C. § 1051 et seq., trademark infringement and unfair competition under the common law and trademark infringement.

51. A declaration that there has been no federal trademark infringement, false designation of origin, passing off, or unfair competition under the Lanham Act, 15 U.S.C. § 1051 et seq., of Plaintiff/CounterDefendant alleged "alliance riggers and constructors" trademark by Defendants/CounterClaimants is appropriate at least because Plaintiff/CounterDefendant do not own protectable rights in the phrase "alliance riggers and constructors" relevant to Defendants/CounterClaimants uses of the phrase "alliance riggers and constructors," and/or because Defendants/CounterClaimants use of the phrase "alliance riggers and constructors" is not likely to cause confusion, mistake, or deceit and/or because Defendants/CounterClaimants alleged use of the phrase "alliance riggers and constructors" is a fair use, First Amendment free speech and not a trademark use of the words.

52. A declaration that there has been a wanton, knowing and willful false declaration under penalty of 18 USC § 1001 by Plaintiff/CounterDefendant Phillip

H. Cordova and his agent attorney of record R. Wayne Pritchard in their first trademark application Number 76711574 dated May 17, 2012 to the USPTO filed under 15 USC § 1051(b). The United States Patent and Trademark office has confirmed that once a trademark has been abandoned, that a falsified document presented to the USPTO "would need to be raised in an inter parties proceeding where the claim would be made that the document was falsified".

53. A declaration that there has been a wanton, knowing and willful false declaration under penalty of 18 USC § 1001 by Plaintiff/CounterDefendant Phillip H. Cordova and his agent attorney of record R. Wayne Pritchard in their second trademark application Number 76716209 dated April 21, 2014 to the USPTO filed under 15 USC § 1051(b).

Declaratory Judgment of No Common Law Infringement or Unfair Competition

54. The allegations contained in all of the paragraphs of this Counterclaim are hereby re-averred and re-alleged, for all purposes, and incorporated herein with the same force and effect as set forth verbatim herein.

55. This is an action for declaratory judgment of no common law trademark infringement or unfair competition by the Defendants/Counterclaimants.

56. An actual and justiciable controversy exists between Defendants/CounterClaimants and Plaintiff/CounterDefendant with respect to Defendants/CounterClaimants alleged trademark infringement and unfair competition under the common law of Plaintiffs/CounterDefendant alleged "alliance riggers and constructors" purported Trademark.

57. A declaration that there has been no common law trademark infringement or unfair competition of Plaintiff/CounterDefendant alleged and purported "alliance riggers and constructors" mark by Defendants/Counterclaimants is appropriate at

least because Plaintiff/CounterDefendant do not own protectable rights in the phrase "alliance riggers and constructors" relevant to Defendants/CounterClaimants use of the phrase "alliance riggers and constructors," and/or because Defendants/CounterClaimants use of the phrase "alliance riggers and constructors" is not likely to cause confusion, mistake, or deceit, and/or because Defendants/CounterClaimants use of the phrase "alliance riggers and constructors" is First Amendment free speech, a fair use and not a trademark use of the words, and/or because Plaintiff/CounterDefendant alleged "alliance riggers and constructors" purported trademark is invalid at least because Plaintiffs/CounterDefendants abandoned the trademark rights they claim in "alliance riggers and constructors" by acquiescing in others uses of the phrase and/or by failing to adequately police the purported mark and further Plaintiff/CounterDefendant abandoned and disclaimed their USPTO trademark application to the name "alliance riggers and constructors" as ruled by the USPTO or/on about April 15, 2013.

Declaratory Judgment of No Trademark Infringement Texas Business and Commerce Code. Chapter 16: Trademarks

58. The allegations contained in all of the paragraphs of this Counterclaim are hereby re-averred and re-alleged, for all purposes, and incorporated herein with the same force and effect as set forth verbatim herein.

59. This is an action for declaratory judgment of no trademark infringement under 15 U.S.C. § 1125 and Texas Business and Commerce Code, Chapter 16: Trademarks.

60. An actual and justiciable controversy exists between Defendants/CounterClaimants and Plaintiff/CounterDefendant with respect to Defendants/CounterClaimants alleged trademark infringement under Texas Business and

Commerce Code, Chapter 16: Trademarks, consisting of its use of the phrase "alliance riggers and constructors"

61. A declaration under 15 U.S.C. § 1125 and Texas Business and Commerce Code, Chapter 16: Trademarks, that there is no trademark infringement under Texas Business and Commerce Code, Chapter 16: Trademarks, attributable to Defendants/CounterClaimants use of the phrase "alliance riggers and constructors" is appropriate at least because Defendants/CounterClaimants First Amendment free speech use of the phrase "alliance riggers and constructors" in a manner that infringes no other party's rights to that phrase does not constitute trademark infringement.

Declaratory Judgment of No Dilution

62. The allegations contained in all of the paragraphs of this Counterclaim are hereby re-averred and re-alleged, for all purposes, and incorporated herein with the same force and effect as set forth verbatim herein.

63. This is an action for declaratory judgment of no dilution under 15 U.S.C. § 1125.

64. An actual and justiciable controversy exists between Defendants/CounterClaimants and Plaintiff/CounterDefendant with respect to Defendants/CounterClaimants alleged dilution under 15 U.S.C. § 1125 of Plaintiff/CounterDefendant alleged "alliance riggers and constructors" trademark.

65. A declaration that Defendants/CounterClaimants use of the merely descriptive English words "alliance riggers and constructors" does not dilute Plaintiffs/CounterDefendant alleged "alliance riggers and constructors " mark under 15 U.S.C. § 1125 is appropriate at least because Plaintiff/CounterDefendant does not own protectable rights in the phrase "alliance riggers and constructors "

relevant to Defendants/CounterClaimants use of the phrase "alliance riggers and constructors ," and/or because Plaintiff/CounterDefendant alleged mark is not famous, and/or because Defendants/CounterClaimants First Amendment free speech use of the phrase "alliance riggers and constructors" is not likely to cause dilution.

Declaratory Judgment of Invalidity under State and Common Law

66. The allegations contained in all of the paragraphs of this Counterclaim are hereby re-averred and re-alleged, for all purposes, and incorporated herein with the same force and effect as set forth verbatim herein.

67. This is an action for declaratory judgment of invalidity under state and common law.

68. An actual and justiciable controversy exists between Defendants/CounterClaimants and Plaintiff/CounterDefendant with respect to the invalidity of Plaintiffs/CounterDefendant alleged "alliance riggers and constructors" trademark under state and common law.

69. A declaration that Plaintiff/CounterDefendant alleged "alliance riggers and constructors" purported trademark is invalid under state and common law is appropriate at least because Plaintiff/CounterDefendant has failed to demonstrate that it owns protectable common law and state trademark rights to the mark "alliance riggers and constructors."

IX. COUNT FIVE: SUIT ON SWORN ACCOUNT

70. The allegations contained in all of the paragraphs of this Counterclaim are hereby re-averred and re-alleged, for all purposes, and incorporated herein with the same force and effect as set forth verbatim herein.

71. The Defendants/Counterclaimants Linda S. Restrepo and Carlos E. Restrepo make a claim against Plaintiff/CounterDefendant Alliance Riggers & Constructors, Ltd., for Suit on Sworn Account.

72. Defendants/CounterClaimants seek actual liquidated damages and both pre and post judgment interest in their suit on sworn account which is essentially a breach of contract cause of action. Texas law allows the prevailing party to receive attorney 's fees and costs associated with the breach of contract even if no such provision is stated in the contract. Section 38.01 of the Texas Civil Practice & Remedies Code allows for attorney's fees and costs in a breach of contract cause of action. Further, Defendants/CounterClaimants plead a fraud claim, fraud in the inducement, and seek exemplary and punitive damages.

73. Defendants/CounterClaimants Linda S. Restrepo, Carlos E. Restrepo files this Suit on Sworn Account pursuant to Rule 185 of the Texas Rules of Civil Procedure, Breach of Contract and Request for Disclosure and respectfully show the Court the following:

74. With an effective date of March 11, 2011 Defendant/CounterClaimant Linda S. Restrepo, (herein referred to Defendants/CounterClaimants) entered into a Contract with Plaintiff/CounterDefendant whereby Linda S. Restrepo as private Consultant was to produce a 5-page webpage and 5-minute Corporate marketing video for Alliance Riggers & Constructors.

75. In fulfillment of all contract requirements, on April 24, 2012 the Defendants/CounterClaimants hired and paid Miracle Delivery Service to hand deliver 100 DVDs of the Corporate Marketing video to Plaintiff/CounterDefendant. On the same day Plaintiff/CounterDefendants accepted delivery of the 100 DVDs delivered to them as

documented by their signature on the Miracle Delivery receipt. A true and correct copy of which is attached hereto as **Exhibit B**.

76. With an effective date of March 23, 2012, after having time to view the webpage on the Internet Plaintiff/CounterDefendant made printed pages of it and submitted the approved printed pages of the webpage to the Defendants/CounterClaimants with an acceptance of GoDaddy Forum selection clause and all the products contained in the webpage by Phillip Cordova (accepted March 16, 2012), Phil Pruett (accepted March 15, 2012), Melody Pruett (accepted March 16, 2012), Nick Lugo, Terry Stevens (accepted March 15, 2012) signing off individually and severally and accepting the webpage as agents of Alliance Riggers & Constructors. A true and correct copy of Defendants/CounterClaimants acceptance of the webpage content is attached hereto as **Exhibit C**.

77. In April 28, 2012 Plaintiff/CounterDefendants signed for and received notice that their webpage had been uploaded to the Internet and that the initial 5-page webpage which had initially been contracted for was increased to 24 pages and was accepted as such based on the written acceptance signatures of Plaintiff/CounterDefendants. A true and correct copy of the April 28, 2012 Letter along with the U.S. Post Office Return Receipt which was signed by the Plaintiff/CounterDefendants on April 30, 2012 are attached hereto as **Exhibit C**.

78. The invoices evidencing this debt dated April 24, 2012 and June 13, 2012 a true and correct copy of which are attached hereto as **Exhibit A** in the amount of \$3,500 and **Exhibit A** in the amount of \$13,500 and incorporated by reference for all intents and purposes. The amounts of the outstanding invoices are reasonable charges for the services rendered by the Defendants/CounterClaimants and accepted by the Plaintiff/CounterDefendant.

79. Despited numerous written demands Plaintiff/CounterDefendant have breached the Contract, refused and failed to pay the \$3,500 due on the Corporate video and the \$13,500 due on the webpage causing Defendants/CounterClaimants Linda S. Restrepo and Carlos E. Restrepo damages in the principal sum of \$17,000.00. All lawful offsets, payments and credits have been allowed. Tex. R. Civ.P. 185. *Wright v. Christian & Smith*. 950 S.W.2d 411, 412 (Tex.App.- Houston [1st Dist.] 1997, no writ).

80. A systematic, itemized statement of the goods and services rendered by the Defendants/Counterclaimants, with all offsets made to the account is attached herein in Affidavit. The claim is, within the Defendants/Counterclaimants knowledge, is kept in the course of business and is just and true.

81. Defendants/Counterclaimants incorporate and include their sworn account affidavit with this Counterclaim.

X. COUNT SIX: THEFT OF SERVICES

82. Plaintiff/CounterDefendant are in violate of Texas Penal Code, Section 31.04- Theft of Services in their attempt to avoid payment for services rendered by the Defendants/CounterClaimants Linda S. Restrepo and Carlos E. Restrepo that Plaintiff/CounterDefendant knew Defendants/CounterClaimants provided said services for compensation.

83. The Defendants/Counterclaimants Linda S. Restrepo and Carlos E. Restrepo make a Civil Theft of Services Claim against Plaintiff/CounterDefendant Alliance Riggers & Constructors, Ltd.

84. Plaintiff/CounterDefendant intentionally and knowingly secured performance of the services through harassment, deception, or intimidation.

85. Plaintiff/CounterDefendant intentionally and knowingly secured the performance of the services by agreeing to provide compensation and, after the services were rendered, failed and refused to make payment after receiving written notices demanding payment.

86. Plaintiff/CounterDefendant failed to make payment under a service agreement within 10 days after receiving written notices demanding payment and still refuses to make payment.

87. Under the provisions of Texas Penal Code, Section 31.04-Theft of Services an offense under this section is a state jail felony if the value of the services stolen is \$1,500 or more but less than \$20,000. Plaintiff/CounterDefendant Alliance's refusal to pay the outstanding invoices of \$13,500 and \$3,500 is within the provisions of Texas Penal Code, of more than \$1,500 but less than \$20,000. Plaintiff/CounterDefendant Alliance's refusal to pay the outstanding invoices of \$13,500 and \$3,500 is within the provisions of Texas Penal Code, Section 31.04-Theft of Services an offense which under this section is a state jail felony.

88. Under the provisions of Texas Penal Code, Section 31.05 Theft of Trade Secrets the Plaintiff/CounterDefendant wrongfully filed a State Court Petition to: (1) steal the Defendants/CounterClaimants Trade Secrets; (2) make copies of Defendants/CounterClaimants Trade Secrets; (3) communicate or transmit Defendants/CounterClaimants trade secrets, (4) obtain the Defendants/CounterClaimants intellectual property and html codes, (5) violate the Defendants/CounterClaimants Copyright, (6) violate Defendants/Counterclaimants First Amendment free speech rights, (7) deprive the Defendants/CounterClaimants of the honest services of a public official, the offenses under Texas Penal Code, Section 31.05 which constitute a felony of the third degree.

89. The acts of the Plaintiff/CounterDefendant have deprived the Defendants/CounterClaimants of their intangible property rights, including the deprivation of Defendants/CounterClaimants property interest in their Federally copyrighted materials, and of their "confidential business information" through mail and internet fraud.

90. Defendants/CounterClaimants allege theft by deception in that the Plaintiff/CounterDefendant purposely obtained Defendants/CounterClaimants property of another by deception.

In accordance with Section 31.09 the amounts claimed in Defendants/CounterClaimants Theft of Services Claim are to be aggregated as a continuing course of conduct by the Plaintiff/CounterDefendant in determining the grade of the offense.

XI. COUNT SEVEN: ABUSE OF PROCESS

91. The allegations contained in all of the paragraphs of this Counterclaim are hereby re-averred and re-alleged, for all purposes, and incorporated herein with the same force and effect as set forth verbatim herein.

92. The actions of Plaintiff/CounterDefendant are of particular importance to demonstrate that Defendants/CounterClaimants have instigated unjustifiable and unreasonable litigation against the Defendants/CounterClaimants Linda S. Restrepo and Carlos E. Restrepo.

93. Defendants/CounterClaimants bring their suit for abuse of process based on the misuse of the legal process by the Plaintiff/CounterDefendant for a collateral purpose. The Plaintiff/CounterDefendant abused the legal process in an ulterior motive to gain an advantage in a legal proceeding, to gain a business advantage

over Defendants/CounterClaimants and to gain economic advantage that would not otherwise be available to them.

94. The filing of a lawsuit against the Defendants/CounterClaimants in June 20, 2012 was used to accomplish an end other than that which the writ was designed to accomplish. Both the Plaintiff/CounterDefendant and their attorney of record R. Wayne Pritchard knew the facts given and maintained for two years of litigations were false, and that the legal theory asserted was invalid but they continued nevertheless. Defendants/CounterClaimants suffered legally recognizable injury, and the lawsuit against them was initiated with "malice."

95. The Plaintiff/CounterDefendant misused the legal process by claiming trademark infringement, which is a misapplication of the law and other claims arising out of trademark infringement against the Defendants/CounterClaimants as coercion to obtain a collateral advantage, not properly involved in the proceedings and to coerce the Defendants/CounterClaimants to surrender their property, and the payment of money owed by the Plaintiff/CounterDefendant to the Defendants/CounterClaimants.

96. Plaintiff/CounterDefendant have engaged in a form of extortion rather than the issuance or any formal use of the process itself which constitutes the tort of abuse of process herein.

97. The Plaintiff/CounterDefendant misused the legal process for a purpose not lawfully warranted by that particular process by engaging in illegal, improper, or perverted use of the legal process, (2) the Plaintiff/CounterDefendant had an ulterior motive or purpose in exercising such use of the process, and (3) the Defendants/CounterClaimants sustained damage as a result of the illegal act.

98. The abuse of process by the Plaintiff/CounterDefendant was utilized to compel/coerce the Defendants/CounterClaimants to do a collateral thing: (1) give up property rights, (2) give up their right to be paid for work performed, (3) give up their freedom of speech rights, (4) give up their intellectual property rights, give up their Federal Rights to copyright, and to (5) give up their Constitutional Rights to access to the Courts and to address the Courts for grievances against them, which Defendants/CounterClaimants would not be compelled to do otherwise. Defendants/CounterClaimants procedure serves an important justice interest: where one person injuriously violates the rights another, "justice requires the victim be fully compensated for his injury or loss".

99. Defendants/CounterClaimants charge that an ulterior purpose and the obtention of a judgement against the Defendants/CounterClaimants as vexatious litigants which was a misapplication of the law and was used to effect an objective not within their proper scope, in an attempt to force the Defendants/CounterClaimants to: (1) give up property rights, (2) give up their right to be paid for work performed, (3) give up their freedom of speech rights, (4) give up their intellectual property rights, (5) give up their Federal Rights to copyright, (6) give up their Constitutional Rights to access to the Courts and to address the Courts for grievances against them and (7) to deprive Defendants/CounterClaimants of their "intangible right to honest services." of a public official.

100. The acts of the Plaintiff/CounterDefendant have deprived the Defendants/CounterClaimants of their intangible property rights, including the deprivation of Defendants/CounterClaimants property interest in their Federally copyrighted materials, and of their "confidential business information" through mail and internet fraud.

101. The actions of the Plaintiff/CounterDefendant were instigated to violate and to deprive the Defendants/CounterClaimants of their Constitutional and Due Process Rights.

102. There was malice and a lack of probable cause for the Plaintiff/CounterDefendant to commence and maintain a proceeding for two years based on the falsehood that the Defendants/CounterClaimants purchased, used the domain name and uploaded a webpage to the domain name **"alliancereggersandconstructors.com"**.

103. There was a termination of the proceedings in favor of the Defendants/CounterClaimants when the Plaintiff/CounterDefendant dismissed their lawsuit on June 20, 2014 and there were damages and injury to the Defendants/CounterClaimants.

XII. COUNT EIGHT: MALICIOUS PROSECUTION

104. The allegations contained in all of the paragraphs of this Counterclaim are hereby re-averred and re-alleged, for all purposes, and incorporated herein with the same force and effect as set forth verbatim herein.

105. The actions of Plaintiffs/CounterDefendants are of particular importance to demonstrate that Plaintiff/CounterDefendant have instigated unjustifiable and unreasonable litigation against the Defendants/CounterClaimants Linda S. Restrepo and Carlos E. Restrepo.

106. Plaintiffs/CounterDefendants have presented false evidence, have ignored facts that no reasonable attorney would ignore and have failed to disclose evidence.

107. Plaintiffs/CounterDefendants knew that the Defendants/CounterClaimants never utilized the domain name subject of their 2012 Petition, yet continued to

prosecute the Defendants/CounterClaimants and tried to prove them guilty of an act they never committed.

108. Defendants/CounterClaimants bring their suit for malicious prosecution based on the misuse of the legal process by the Plaintiff/CounterDefendant for a collateral purpose. The filing of a Petition against the Defendants/CounterClaimants in June 20, 2012 was used to accomplish an end other than that which the writ was designed to accomplish. Both the Plaintiff/CounterDefendant and their agent attorney of record R. Wayne Pritchard knew the facts given and maintained for two years of litigations were false, and that the legal theory asserted was invalid but they continued nevertheless. Defendants/CounterClaimants suffered legally recognizable injury, and the lawsuit against them was initiated with "malice."

109. The Plaintiff/CounterDefendant misused the legal process by claiming trademark infringement, which is a misapplication of the law and other claims arising out of trademark infringement against the Defendants/CounterClaimants as coercion to obtain a collateral advantage, not properly involved in the proceedings and to coerce the Defendants/CounterClaimants to surrender their property, and the payment of money owed by the Plaintiff/CounterDefendant to the Defendants/CounterClaimants.

110. Plaintiff/CounterDefendant have engaged in a form of extortion rather than the issuance or any formal use of the process itself which constitutes the tort of abuse of process herein.

111. The Plaintiff/CounterDefendant misused the process for a purpose not lawfully warranted by that particular process:, (1) the Plaintiff/CounterDefendant had an ulterior motive or purpose for misusing the process, and (2) the Defendants/CounterClaimants sustained damage from the irregularity.

112. The abuse of process by the Plaintiff/CounterDefendant was utilized to compel/coerce the Defendants/CounterClaimants to do a collateral thing:, (1) give up property rights, (2) give up their right to be paid for work performed, (3) give up their First Amendment freedom of speech rights, (4) give up their intellectual property rights, give up their Constitutional Federal Rights to copyright, and to (5) give up their Constitutional Rights to access to the Courts and to address the Courts for grievances against them, which Defendants/CounterClaimants would not be compelled to do" otherwise. This case is an important test for free speech protections in Texas.

113. Defendants/CounterClaimants charge an ulterior purpose by the Plaintiff/CounterDefendant through the obtention of a judgement against the Defendants/CounterClaimants as vexatious litigants which was a misapplication of the law and was used to effect an objective not within their proper scope, in an attempt to force the Defendants/CounterClaimants to: (1) give up property rights, (2) give up their right to be paid for work performed, (3) give up their First Amendment freedom of speech rights, (4) give up their intellectual property rights, (5) misappropriation of Defendants/CounterClaimants trade secrets and confidential information, (6) give up their Federal Rights to copyright, (7) give up their Constitutional Rights to access to the Courts and to address the Courts for grievances against them and (8) to deprive Defendants/CounterClaimants of their "intangible right to honest services." of a public official.

114. The acts of the Plaintiff/CounterDefendant have deprived the Defendants/CounterClaimants of their intangible property rights, including the deprivation of Defendants/CounterClaimants property interest in their Constitutional Federally

copyrighted materials, and of their "confidential business information" through mail and internet fraud.

115. The actions of the Plaintiff/CounterDefendant resulted in special injury to the Defendants/CounterClaimants through actual interference with the Defendants/CounterClaimants person in that they were physically detained (by threat of contempt of court and sanctions) from entering any Courthouse in El Paso, Texas and invoking the protection of the Courts for damages against them, denying Defendants/CounterClaimants access to the judicial system. The Defendants/CounterClaimants were deprived of their trade secrets, intellectual and copyright property, and the Court allowed the actual seizure of Defendants/CounterClaimants trade secrets, intellectual property to include their proprietary html codes based on the malicious persecution instigated against them by the Plaintiff/CounterDefendant.

116. The special injury giving rise to this malicious prosecution claim is based on interference with a person or his property. In this case, the Plaintiff/CounterDefendant interfered with Defendants/CounterClaimants persons, insofar it prohibited them from engaging in certain activities and procuring an unconstitutional application order of vexatious litigant statute against the Defendants/CounterClaimants.

117. The actions of the Plaintiff/CounterDefendant were instigated to violate and deprive the Defendants/CounterClaimants of their Constitutional and Due Process Rights under the First and Fourteenth Amendments.

118. As direct and proximate cause of Plaintiff/CounterDefendant malicious prosecution, Defendants/CounterClaimants suffered actual and consequential damages within the jurisdictional limits of this Court including, but not limited to: (1)

legal fees and costs, (2) lost profits, (3) lost income, (4) lost business opportunities and (5) mental anguish (6) damage to reputation.

119. There was malice and a lack of probable cause for the Plaintiff/CounterDefendant to commence and maintain a proceeding for two years based on the falsehood that the Defendants/CounterClaimants purchased the domain name and uploaded a webpage to the domain name "alliancereggersandconstructors.com".

120. There was a termination of the proceedings in favor of the Defendants/CounterClaimants when the Plaintiff/CounterDefendant dismissed their lawsuit on June 20, 2014 and there were damages to the Defendants/CounterClaimants.

121. There was a termination of the proceedings in favor of the Defendants/CounterClaimants when the Plaintiff/CounterDefendant dismissed their lawsuit on June 20, 2014 and there were injury and damages to the Defendants/CounterClaimants.

COUNT XIII : NEGLIGENT MISREPRESENTATION

122. The allegations contained in all of the paragraphs of this Counterclaim are hereby re-averred and re-alleged, for all purposes, and incorporated herein with the same force and effect as set forth verbatim herein.

123. The Plaintiff/CounterDefendant Petition is without merit, without any basis in fact, there is no legal justification for bringing the suit and no possible law on which the suit could be based.

124. Plaintiff/CounterDefendant made numerous representations or omissions to Defendants/CounterClaimants Linda S. Restrepo and Carlos E. Restrepo in the course of Plaintiff/CounterDefendant business or in a transaction in which Plaintiff/CounterDefendant had a pecuniary interest. Plaintiff/CounterDefendant supplied false information for the guidance of Defendants/CounterClaimants Linda S.

Restrepo and Carlos E. Restrepo. Plaintiff/CounterDefendant did not exercise reasonable care or competence in obtaining or communicating this information. Defendants/CounterClaimants Linda S. Restrepo and Carlos E. Restrepo justifiably relied on the misrepresentations and omissions and said misrepresentations and omissions on the part of the Plaintiff/CounterDefendant proximately caused Linda S. Restrepo and Carlos E. Restrepo to suffer substantial injury and damages proximately caused by Plaintiff/CounterDefendant. Plaintiff/CounterDefendant's actions were fraudulent, malicious, and/or grossly negligent and subject them to exemplary damages in an amount to be determined by the jury. *Larsen y Carlene Langford & Associates* 41 S.W.3d 245 (Tex.App.-Waco 2001 n.pet.h.)

125. Plaintiff/CounterDefendant fraudulently misrepresented the truth as the true nature of the contract and the basis for which Plaintiff/CounterDefendant sought services to be rendered by the Defendants/CounterClaimants. The Plaintiff/CounterDefendant presented perjured allegations to a court of law known by them to be false and without any legal justification for bringing the suit and no possible law on which the suit could be based. The fraudulent misrepresentation of Plaintiff/CounterDefendant as set herein are a proximate cause of injury and damages to Defendants/CounterClaimants Linda S. Restrepo and Carlos E. Restrepo for which Defendants/CounterClaimants seek judgment of the court.

COUNT XIV : FRAUD

126. The allegations contained in all of the paragraphs of this Counterclaim are hereby re-averred and re-alleged, for all purposes, and incorporated herein with the same force and effect as set forth verbatim herein.

127. The Plaintiff/CounterDefendant's Petition is fraudulent, without merit, without any basis in fact, there is no legal justification for bringing the suit and no possible law on which the suit could be based.

128. All actions by the Plaintiff/CounterDefendant's are tainted by their fraud, false accusations and perjured statements made to the Courts.

129. Plaintiff/CounterDefendant made numerous material misrepresentations or omissions to Defendants/CounterClaimants Linda S. Restrepo and Carlos E. Restrepo to induce them to perform work. These representations were false and/or were made recklessly, as positive assertions, and without knowledge of their truth. Plaintiff/CounterDefendant made these representations and omissions with the intent that Defendants/ CounterClaimants Linda S. Restrepo and Carlos E. Restrepo acted to rely on them, and Defendants/ CounterClaimants did rely on them to their detriment.

130. Plaintiff/CounterDefendant misrepresentations and omissions proximately caused Defendants/CounterClaimants Linda S. Restrepo and Carlos E. Restrepo to suffer substantial injury and damages. Plaintiff/CounterDefendant's actions were fraudulent, malicious, and/or grossly negligent and subject them to exemplary damages in an amount to be determined by the jury.

COUNT XV: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

131. The allegations contained in all of the paragraphs of this Counterclaim are hereby re-averred and re-alleged, for all purposes, and incorporated herein with the same force and effect as set forth verbatim herein.

132. The Defendants/Counterclaimants herein claim intentional infliction of emotional distress: (1) The PlaintiffCounter/Defendant acted intentionally or recklessly, (2) The conduct of the PlaintiffCounter/Defendant as alleged herein in

Counts I to XIV was extreme and outrageous, (3) the acts of the Plaintiff/Counter/Defendant caused the Defendants/Counterclaimants to suffer emotional distress; and (4) the emotional distress suffered by the Defendants/Counter/Claimants was severe. *Kroger Tex. Ltd. Partnership v. Suberu*, 216 S.W.3d 788, 796 (Tex.2006); *Twyman v. Twyman*, 855 S.W.2d 619 (Tex.1993).

Punitive and Exemplary Damages

133. Defendants/CounterClaimants Linda S. Restrepo and Carlos E. Restrepo seek punitive damages from the Plaintiff/CounterDefendant, to deter them from engaging in conduct similar to that which formed the basis of the lawsuit. The actions of the Plaintiff/CounterDefendant have displayed their actual malicious intent to cause injury and harm to the Defendants/CounterClaimants Linda S. Restrepo and Carlos E. Restrepo. Texas Civil Practice and Remedies Code, Chapter 41. Sec. 41.003.

COUNT XVI : CONSTRUCTIVE FRAUD

134. The allegations contained in all of the paragraphs of this Counterclaim are hereby re-averred and re-alleged, for all purposes, and incorporated herein with the same force and effect as set forth verbatim herein.

135. By virtue of Plaintiff/CounterDefendants actions aforesaid, Plaintiff/CounterDefendant's actions were fraudulent because they tended to deceive others, violate confidences, or cause injury to public interests.

136. As a result of Plaintiff/CounterDefendant fraud aforesaid, Defendants/CounterClaimants Linda S. Restrepo and Carlos E. Restrepo have suffered pecuniary harm and request compensatory and punitive damages in an amount to be determined at trial.

COUNT XVII: DEFAMATION

137. The allegations contained in all of the paragraphs of this Counterclaim are hereby re-averred and re-alleged, for all purposes, and incorporated herein with the same force and effect as set forth verbatim herein.

138. Plaintiffs/CounterDefendants knowingly, wantonly and through negligence slandered Defendants/CounterClaimants Linda S. Restrepo and Carlos E. Restrepo by false defamatory statements that were published in public records and on the Internet without a legal excuse, knowing that the contents of said false statements would infringe upon the Defendants/CounterClaimants ability to earn a living, discredit them in the community and cause irreparable injury to their professional reputation and business.

139. Plaintiffs/CounterDefendants knowingly, wantonly and through negligence libeled Defendants/CounterClaimants Linda S. Restrepo and Carlos E. Restrepo by false defamatory statements that were published in public records and on the Internet without a legal excuse, knowing that the contents of said false statements would infringe upon the Defendants/CounterClaimants ability to earn a living, discredit them in the community, cause irreparable injury to their professional reputation and business.

140. The slander and libel instigated by the Plaintiff/CounterDefendants was based on malice and the Plaintiffs/CounterDefendants complete lack of truth as to what was stated and published.

141. Plaintiffs/CounterDefendants made the statements knowing that such statements were made with false and reckless disregard as to the truth.

142. The Plaintiff/CounterDefendant knowingly misrepresented facts with the purpose of making false accusations against Defendants/CounterClaimants. These false statements were published with actual malice.

143. These false claims were known to be false by the Plaintiff/CounterDefendant at the time they were made and were made and published with the intent to cause substantial injury to Defendants/CounterClaimants reputation, to open them up to scorn in the world wide web community, and to damage their livelihood.

144. The false statements, intended by Plaintiff/CounterDefendant to injure Defendants/CounterClaimants in their trade and profession, constitute defamation per se, therefore damages are presumed from the publication of these false statements in public forums.

145. Alternatively, these statements intended by Plaintiff/CounterDefendant to injure Defendants/CounterClaimants in their trade and profession, constitute defamation per quod.

146. The malicious publication of the false statements about Defendants/CounterClaimants detailed above have caused and continue to cause actual general and special damages to Defendants/CounterClaimants, including, injury to character and reputation, humiliation, injury to feelings, and loss of earning capacity.

Exemplary Damages

147. Because Plaintiffs/CounterDefendants acted with actual malice, the Defendants/CounterClaimants are entitled to recover exemplary damages as defined by the Texas Civil Practice & Remedies Code § 43.001, et seq.

**COUNT XVIII: COUNTERCLAIM VIOLATIONS OF FIRST
AMENDMENT FREEDOM OF SPEECH
AND CONSTITUTIONAL RIGHTS**

148. The allegations contained in all of the paragraphs of this Counterclaim are hereby re-averred and re-alleged, for all purposes, and incorporated herein with the same force and effect as set forth verbatim herein.

149. The Defendants/CounterClaimants claim that they have been denied due course of law under the Texas Constitution as well as the U.S. Constitution.

150. On June 20, 2012 and June 20, 2014 Plaintiffs/CounterDefendants initiated meritless lawsuits against Defendants/CounterClaimants as well as a November 3, 2014 vexatious litigant determination, initiated to discourage Defendants/CounterClaimants from exercising their First Amendment right to petition the government, and Defendants/CounterClaimants free speech guarantee under U.S. Const. Amend. I and Tex. Const. Art. I, §8 in the Texas Constitution¹

151. Defendants/CounterClaimants claim that their rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution has been violated throughout this litigation in that the Plaintiffs/Counterdefendants have withheld evidence favorable to the Defendants/CounterClaimants that creates a probability sufficient to undermine confidence in the outcome of the proceeding.

¹ Compare [U.S. Const. amend. I](#) ("Congress shall make no law... abridging the freedom of speech, or of the press"), with [Tex. Const. art. I, §8](#) ("Every person shall be at liberty to speak, write[,] or publish his opinions on any subject...."). The semantics of the free speech guarantee in the Texas Constitution markedly differ from the language used in the First Amendment of the United States Constitution. See [Jones v. Mem'l Hosp. Sys., 746 S.W.2d 891, 893](#) (Tex. App.--Houston [1st Dist.] 1988, no writ) (distinguishing the free speech provisions of the Texas Constitution and the United States Constitution). "The Texas Constitution, in positive terms, guarantees that every person has the right to speak, write, or publish their opinion on any subject. The federal constitution, on the other hand, expresses first amendment freedoms in negative terms, simply restricting governmental interference with such freedoms." Id.

152. Plaintiffs/Counterdefendants have refused to comply with discovery mandated by Texas Rules of Civil Procedure, and therefore evidence has been suppressed which is favorable to the Defendants/Counterclaimants and said suppressed evidence was material to either guilt or punishment in the form of the vexatious litigant ruling against the Defendants/Counterclaims, as well as deprivation of the Defendants/Counterclaimants intellectual property rights and trade secrets.

153. Defendants/CounterClaimants bring a Constitutional Right and Violations of Speech Counterclaim based on the Plaintiff/CounterDefendant "lawsuit" which was brought to discourage various activities associated with the exercise of Defendants/CounterClaimants constitutional rights to free speech through the internet and multi-media and to petition the government.

General Constitutional Challenges: Due Process:

154. The Defendants/Counterclaimants have been denied their Due Process rights for essential and fundamental fairness contrary to the Due Process Clauses of the 5th and 14th Amendments to the U.S. Constitution². The Defendants/Counterclaimants have been denied their procedural due process rights of adequate notice, hearing and impartiality. In order to provide procedural due process, it is important that not only a hearing be provided, but that the court is not predisposed against the individual such as in this case.

155. The Defendants/Counterclaimants herein have been denied their substantive due process rights which are intended to protect them from arbitrary governmental action, and deprivations of their freedom of speech rights.

² This protection is guaranteed by the 5th Amendment to the United States Constitution made applicable to the states by the 14th Amendment.

156. The Defendants/Counterclaimants have been deprived of equal protection under the law which is part of the 14th Amendment to the U.S. Constitution in that they have been discriminated by County Court at Law #5 through unequal protection of the laws and through preference given to the Plaintiffs/Counterclaimants throughout the litigation.

157. Plaintiff/CounterDefendant's June 20, 2012 suit created an exorbitant financial burden on Defendants/CounterClaimants as innocent parties who have little means, particularly in comparison to Plaintiff/CounterDefendant the filing party. Beyond that injustice, Plaintiff/CounterDefendant suits cause a more far-reaching and throttling effect on Defendants/CounterClaimants freedom of speech rights. Plaintiff/CounterDefendant retaliatory lawsuits filed against Defendants/CounterClaimants for exercise of their free speech rights threatens the Defendants/CounterClaimants with financial liability, litigation costs, destruction of a business, loss of a home, extreme emotional distress resulting in physical injury and other personal losses.

158. Plaintiff/CounterDefendant suits of June 20, 2012 and June 20, 2014 had a precise tactical intent-to silence Defendants/CounterClaimants by instigating financially oppressive and meritless litigation against them for implementation of their internet based First Amendment freedom of speech rights, their Federally protected copyright and intellectual property rights as well as their First Amendments right to petition the government.

159. Plaintiffs/CounterDefendant knowingly wantonly and with malice utilized the claim of trademark infringement and breach of contract to effectuate their ulterior motives.

160. Defendants/CounterClaimants earn their living through through self-publishing, videos, the internet and other forms of public speech. The Plaintiffs/CounterDefendant's filing of frivolous lawsuits was aimed at silencing Defendants/CounterClaimants who are participating in the free exchange of ideas. The legal actions instigated by Plaintiffs/CounterDefendant are based on, relates to, or is in response to the Defendants/CounterClaimants exercise of the First Amendment right of free speech, right to petition.

XIX: CONDITIONS PRECEDENT

161. All condition precedent have been performed or have occurred pursuant to Tex.A. Civ. P. 54.

XX. JURY DEMAND

162. Defendants/CounterClaimants request trial by jury. Pursuant to TRCP Rule 245 and the Seventh Amendment of the United States Constitution, Defendants hereby demands a jury trial on all issues in the Complaint and Counterclaims triable to a jury.

XXI. UNNAMED PARTIES

163. Defendants/Counterclaimants reserve the right to add other unnamed parties as defendants to this lawsuit at a later date.

XXII. RIGHT TO AMEND PETITION

164. Defendants/Counterclaimants reserve the right to amend and modify their claims and petition at a later date and as deemed necessary and in the best interest to protect their Constitutional and Civil Rights to Due Process. Defendants/Counterclaimants do not waive any objections they may have as to service, jurisdiction, or venue, or any other defenses and objections they are entitled to by law. Defendants/CounterClaimants intend no admissions of fact, law

or liability by this counterclaim and expressly reserve the right to amend and/or supplement their petition.

WHEREFORE, premises considered Defendants/CounterClaimants Linda S. Restrepo and Carlos E. Restrepo pray that Plaintiff/CounterDefendant be cited to appear and answer herein and, upon trial of this matter judgment against the Plaintiff/CounterDefendant, individually, jointly and severally, in the principal sum of \$17,000.00 plus interest on unpaid services fees and exemplary and punitive damages in an amount to be determined by a jury, for the following:

- (1) The court dismiss Plaintiff/CounterDefendant lawsuit petition against Defendants/Counterclaimants with prejudice against Plaintiff/CounterDefendant;
- (2) Award all damages, whether actual, consequential , exemplary or punitive to which Defendants/CounterClaimants are entitled;
- (3) Award reasonable comparative attorney's fees, reasonable consulting fees, costs of court and pre- and post-judgment interest at the highest rate allowed by law; costs of bringing this action, including related expenses of bring the action (including investigative expense) and business, professional and legal consultations;
- (4) Issue an order revoking any license enabling Plaintiff/CounterDefendant, Alliance Riggers & Constructors, LTD., to operate in the State of Texas and revoking any certificate authorizing Plaintiff/CounterDefendant, Alliance Riggers & Constructors, LTD., to do business in Texas if any judgment rendered in this case regardless of appeals has not been satisfied within three (3) months from the date of filing said final judgment; and;

(5) Issue an order that Plaintiff/CounterDefendant is required to pay in full for all work which the Defendants/CounterClaimants have performed for the Plaintiff/CounterDefendant.

(6) Issue an order authorizing Defendants/Counterclaimants to place liens on all equipment and properties belonging to Plaintiff/CounterDefendant which were utilized as part of the contract if any judgment rendered in this case regardless of appeals has not been satisfied within three (3) months from the date of filing said final judgment; and;

(7) The entry of judgment on Plaintiff/CounterDefendant Complaint in Defendants/CounterClaimants Linda Restrepo and Carlos Restrepo's favor and against Plaintiff/CounterDefendant;

(8) That Plaintiff/CounterDefendant and all others in privity or acting in concert with Plaintiff/CounterDefendant, be permanently enjoined from asserting that Defendants/CounterClaimants ownership and use of the phrase "alliance riggers and constructors" complained of in Plaintiff/CounterDefendant Complaint constitutes trademark infringement, unfair competition, or any other violation or infringement of any alleged proprietary rights of Plaintiff/CounterDefendant.

(9) Declaratory judgment that Defendants/CounterClaimants Linda Restrepo and Carlos Restrepo's are the rightful legal owners of the Internet domain name "allianceriggersandconstructors.com" and are entitled to its fair use for any purposes Defendants/CounterClaimants see fit and is a fair use protected under the assertion of use under the Trademark Act.

(10) Declaratory judgment that Defendants/CounterClaimants Linda Restrepo and Carlos Restrepo's ownership and use of "alliance riggers and constructors "

complained of in Plaintiff/CounterDefendant Complaint is a fair use and is protected under the Trademark Act;

(11) Declaratory judgment of no federal trademark infringement, false designation of origin, passing off or unfair competition under the Lanham Act, 15 U.S.C. § 1051 et seq.;

(12) Declaratory judgment of no common law trademark infringement or unfair competition;

(13) Declaratory judgment of no Texas trademark infringement under Texas Business and Commerce Code, Chapter 16: Trademarks.

(14) Declaratory judgment of no dilution under 15 U.S.C. § 1125;

(15) Declaratory judgment of invalidity of Plaintiff/CounterDefendant alleged "alliance riggers and constructors" trademark under the common law;

(16) Declaratory judgment of cancellation of the unconstitutional vexatious order of November 3, 2014 and removal of any reference to such vexatious determination from the State of Texas Supreme Court files, any federal court and any other state or federal databases.

(17) That this Court declare this to be an exceptional case and award Defendants/CounterClaimants Linda Restrepo and Carlos Restrepo their reasonable comparable attorneys' fees and costs in accordance with Texas Rules of Civil Procedure and 17 U.S.C. § 17; and for such other and further relief, general or special, legal or equitable to which Defendants/CounterClaimants Linda S. Restrepo and Carlos E. Restrepo may be justly entitled.

Dated this 1st day of June 2015.

Respectfully Submitted,

/S/ Carlos E. Restrepo

Carlos E. Restrepo, Pro Se
P.O. Box 12066
El Paso, Texas 79913
(915) 581-2732

/S/ Linda S. Restrepo

Linda S. Restrepo, Pro Se
P.O. Box 12066
El Paso, Texas 79913
(915) 581-2732

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of June 2015 a true and correct copy of the foregoing petition was forwarded via Efiletx.gov to: Wayne Pritchard, P.C. at: wpritchard@pritchlaw.com, Attorney of Record for Alliance Riggers & Constructors, Ltd. 300 East Main, Suite 1240 El Paso, Texas 79901, and Judge Carlos Villa at: pbustmante@epcounty.com.

/S/ Carlos E. Restrepo

ATTACHED: AFFIDAVIT FOR VERIFIED ACCOUNT

IN THE STATE OF TEXAS

§

§

COUNTY OF EL PASO

§

AFFIDAVIT FOR VERIFIED ACCOUNT

"BEFORE ME, the undersigned authority, on this day personally appeared Carlos E. Restrepo who after being duly sworn upon oath, stated to me that he is the Defendants/CounterClaimants in the above-entitled and numbered cause, and that the facts presented in the Suit on Sworn Account are based upon information and belief and are true and correct to the best of their knowledge. The information presented herein is within the personal knowledges of the Affiant. As set out below Affiant provided the following services to Alliance Riggers & Constructors, Ltd.

WORK PERFORMED	RETAINER	ADDITIONAL WORK PERFORMED	AMOUNT DUE
Corporate Video	\$1,000	\$2,5000	\$3,500
Corporate WEBPAGE	\$1,000	\$12,500	\$13,500
TOTAL DUE			\$17,000

1. The sum of \$17,000 is within Affiants Carlos E. Restrepo's knowledge due and owing by Alliance Riggers & Constructors, Ltd. that this debt is just and true, it is due and unpaid and that all just and lawful offsets, payments and credits have been allowed. The invoices evidencing this debt are attached hereto, incorporated by reference and designated as EXHIBIT A and video acceptance Delivery EXHIBIT B, Webpage upload EXHIBIT C.

2. Alliance Riggers & Constructors, Ltd. promised to pay for the services rendered under the contract it entered into with Defendants/CounterClaimants (attached hereto and incorporated by reference in EXHIBIT D which is a true and correct copy of the contract giving rise to this suit.

3. I, Carlos E. Restrepo have the care, custody and control of the billing record concerning the account of the Plaintiff Alliance Riggers & Constructors, Ltd.

4. I, Carlos Restrepo have reviewed the Plaintiff Alliance Riggers & Constructors, Ltd. billing record and they show that the Plaintiff owes the Defendants the sum total of \$ 17,000.00 for principal (save the original interest and other charges), for balance due on the Alliance Riggers & Constructors, Ltd., web page and Alliance Riggers & Constructors, Ltd., corporate marketing videos. Although Defendants have made repeated attempts upon Plaintiff to pay the account, Plaintiff has failed and refused, and continues to fail and refuse, to pay this account. All just and lawful offsets and credits have been allowed.

FURTHER AFFIANT SAYETH NOT."
SIGNED this 1st Day of June 2015

Carlos E. Restrepo
Carlos E. Restrepo, Pro Se

SWORN AND SUBSCRIBED TO before me on this 1st Day of June 2015

[Signature]
NOTARY PUBLIC IN AND FOR

